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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 945

THE BOROUGH OF RINGWOOD, Passaic County, New Jersey, a Municipal Corporation of the State of New Jersey,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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IN THE

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No.

THE BOROUGH OF RINGWOOD, PASSAIC COUNTY, NEW JERSEY, A MUNICIPAL CORPORATION OF THE STATE OF NEW JERSEY,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

TO: THE HONORABLE CHIEF JUSTICE AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Petitioner, Borough of Ringwood, respectfully prays that a Writ of Certiorari issue to review the final judgment and opinion thereupon rendered in the United States Court of Appeals for the Third Circuit, the opinion of said Court being rendered on January 20, 1958 and the mandate thereupon being issued February 5, 1958.

Opinions Below

The opinion of the United States District Court, District of New Jersey, MODARELLI, J. D. C., is reported *United States* v. *Ringwood Iron Mines, Inc.*, 151 F. Supp. 421 (D. N. J. 1957); and is reproduced in the Appendix annexed (A69a).

The opinion of the United States Court of Appeals for the Third Circuit is reported in *United States* v. *Ringwood Iron Mines, Inc.*, 251 F. 2d 145 (C. A. 3, 1958) and is also reproduced in the Appendix annexed (A82a).

Statement as to Jurisdiction

The opinion of the United States Court of Appeals for the Third Circuit was rendered January 20, 1958 and the mandate issued February 5, 1958. The jurisdiction of this Court to review the questions herein presented is respectfully invoked under Title 28 U.S.C.A. Section 1254 (1).

Questions Presented for Review

Whether a writ of certiori should issue so that this Court may consider and propound decisional law defining the concept of lien priority displacement; in determining the rights of a Government agency holding a mortgage lien, as against municipal tax liens?

Whether, in view of the extensive nature of government activity in commerce, it is of public concern to resolve the respective rights as between federal agencies holding mortgages on private concerns, and the tax liens of the States—or its subdivisions?

Whether the plight of the Petitioner, a small community, whose financial equalibrium has been seriously damaged, by the obliteration of its tax liens against the real estate,

constitutes a question of public concern justifying issuance of the writ of certiorari?

Whether the Government mortgage lien should be deemed to have been displaced in favor of the lien of the municipality for taxes, accrued and unpaid, in the light of the Government's tolerations of the continued defaults of the private corporation, and its actions to the prejudice of the municipal tax liens?

Whether the tax lien of the municipality, for unpaid taxes assessed against the mortgagor of the Government, should be deemed, in law and equity, superior to the mortgage lien of the Government?

Whether a custodial receiver appointed under the general equity powers of the United States District Court is obliged to pay local taxes, and follow the law of the state?

Whether the entire controversy between the parties should be given finality be determining the obligation of the government to make payments in lieu of taxes by reason of remedial legislation providing therefor?

Statutes Involved

48 Stat. 993, 28 U.S.C. (1940 Ed) 124 A. 28 U.S.C.A. 960:

> "Any officers and agents conducting any business under the authority of a United States Court shall be subject to all Federal, State and local taxes applicable to such business to the same extent as if it were conducted by an individual or corporation (June 25, 1948)"

36 Stat. 104, 28 U.S.C. (1940 Ed.) 124, 125, 28 U.S.C.A. 959(b):

> "A trustee, receiver or manager appointed in any cause pending in any Court of the United States, including

a debtor in possession, shall manage and operate the property in his possession as such trustee, receiver * * * according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof."

69 Stat. 722, 40 U.S.C.A. 521:

"The Congress recognizes that the transfer of real property having a taxable status from the Reconstruction Finance Company or any of its subsidiaries to another government department has often operated to remove such property from the tax rolls of States and local taxing authorities, thereby creating an undue and unexpected burden upon such States and local taxing authorities and causing disruption of their operations.

69 Stat. 722, 40 U.S.C.A. 523:

"Where real property has been transferred on or after January 1, 1946, from the Reconstruction Finance Corportion to any Government department, and the title to such real property has been held by the United States continuously since such transfer, then on each date occurring on or after January 1, 1955, and prior to January 1, 1959, on which real property taxes levied by any State or local taxing authority with respect to any period become due, the Government department which has custody and control of such real property shall pay to the appropriate State and local taxing authorities an amount equal to the amount of the real property tax which would be payable to each such State or local taxing authority on such date if legal title to such real property had been held by a private citizen on such date and during all periods to which such date relates. June 30, 1949, c. 288 Title VII, Sec. 703, as added Aug. 12, 1955, c. 874, Sec. 3, 69 Stat. 722."

R.S. 54:4-1 (*N.J.S.A.*):

"54:4-1. Property subject to tax; intangible personal property excluded; omitted property; date of assessment

All property real and personal within the jurisdiction of this State not expressly exempted from taxation or expressly excluded from the operation of this chapter shall be subject to taxation annually under this chapter at its true value, and shall be valued by the assessors of the respective taxing districts. An executory contract for the sale of land, under which the vendee is entitled to or does take possession thereof, shall be deemed, for the purpose of this act, a mortgage of said land for the unpaid balance of purchase price. Personal property taxable under this chapter shall include, however, only tangible goods and chattels and shall not include any intangible personal property whatsoever whether or not such personalty is evidenced by a tangible or intangible chose in action, except as otherwise required by sections 54:4-20, 54:4-21 and 54:4-22 hereof. Property omitted from any assessment may be assessed by the county board of taxation within such time and in such manner as shall be provided by law. All property shall be assessed to the owner thereof with reference to the amount owned on October first in each year, and the person so assessed for personal property shall be personally liable for the taxes thereon. As amended L. 1942, c. 281, p. 1095, §1; L. 1943, c. 120, p. 353, §1; L. 1945, c. 163, p. 576; §1; L. 1946, c. 159, p. 722, §1; L. 1946, c. 242, p. 857; §§ 1, 2; L. 1947, c. 413, p. 1287, §14."

R.S. 54:4-23 (N.J.S.A.):

"54:4-23. Duty of assessor; standard of value

The assessor shall ascertain the names of the own-

ers of all real property situate in his taxing district, and after examination and inquiry, determine the full and fair value of each parcel of real property situate in the taxing district at such price as, in his judgment, it would sell for at a fair and bona fide sale by private contract on October first next preceding the date on which the assessor shall complete his assessments, as hereinafter required. As amended L. 1942, c. 281, p. 1096, §3; L. 1943, c. 120, p. 353, §3."

R.S. 54:5-6 (N.J.S.A.):

"54:5-6. Unpaid taxes a lien; penalties and costs

Taxes on lands shall be a lien on the land on which they are assessed on and after the first day of January of the year for which the taxes are assessed, and all interest, penalties, and costs of collection which thereafter fall due or accrue shall be added to and become a part of such lien. As amended L. 1944, c. 247, p. 812, §1."

R.S. 54:5-9 (N.J.S.A.):

"54:5-9. Municipal liens paramount

Every Municipal Lien shall be a first lien on such land and paramount to all prior or subsequent alienations and descents of such lands or encumbrances thereon, except subsequent municipal liens." Source: Law 1943, c. 237, p. 884

R.S. 54:5-19 (N.J.S.A.):

"54:5-19. Power of sale; 'collector' and 'officer' defined

When unpaid taxes or any municipal lien, or part thereof, on real property, remains in arrears on July

first in the calendar year following the calendar year when the same became in arrears, the collector or other officer charged by law in the municipality with that duty, shall subject to the provisions of the next paragraph, enforce the lien by selling the property in the manner set forth in this article.

The term 'collector' as hereinafter used includes any such officer, and the term 'officer' includes the collector.

The municipality may by resolution direct that where unpaid taxes or other municipal liens, or part thereof, are in arrears for more than one year, such sale shall include only such unpaid taxes or other municipal liens as were in arrears in the year designated in such resolution, and may by resolution, either general or special, direct that there shall be omitted from such sale any or all such unpaid taxes, and other municipal liens, or parts thereof, on real property, upon which regular, equal monthly installment payments are being made, in pursuance to such agreement as may be authorized by the said resolution between the collector and the owner or person interested in the property upon which such delinquent taxes may be due; *provided*, that said agreement shall require payment of such installment payments in amounts large enough to pay in full all delinquent taxes, assessments and other municipal liens held by the municipality, in not more than five years from the date of such agreement; *provided*, that the extension of time for payment of such arrearages herein authorized shall not apply to any parcel of property which prior thereto have been included in any plan theretofore adopted by any municipality of this State under and pursuant to the provisions of any public statute of this State whereunder prior extensions for the payment of delinquent taxes were authorized; *provided further*, that the right of any person in-

terested in such property to pay such arrears in such installments shall be conditioned on the prompt payment of the installments of taxes for the current year in which such agreement is made, and all subsequent taxes, assessments and other municipal liens imposed or becoming a lien thereafter, including all installments thereafter payable on assessments theretofore levied, and also the prompt payment of all installments of arrears as hereinbefore authorized; *and provided further*, that in case any such installment of arrears or any new taxes, assessments or other liens are not promptly paid, that is to say, within thirty days after the date when the same is due and payable, then such agreement shall be void, and in any such case the collector, or other officer charged by law with that duty, shall proceed to enforce such lien by selling in the manner in this article provided. As amended L. 1944, c. 108, p. 280, §1.

R.S. 54:5-54 (N.J.S.A.):

"54:5-54. Right of redemption by owner or person having interest.

The owner, mortgagee, occupant or other person having an interest in land sold for municipal liens, may redeem it at any time within two years from the date of sale, or at any time thereafter until the right to redeem has been cut off in the manner in this chapter set forth, by paying to the collector, or to the collector of delinquent taxes on lands of the municipality where the land is situate, for the use of the purchaser, his heirs or assigns, the amount required for redemption as hereinafter set forth."

Statement of the Case

The Borough of Ringwood, New Jersey, is a rural community situated in the northern section of Passaic County, New Jersey. The Borough is the taxing district where the mining property in issue is situated.

In 1942 and 1943, the mining properties were acquired, by mesne deeds, by the Defense Plant Corporation, under the Reconstruction Finance Corporation.

By deed dated: February 13, 1950, The Reconstruction Finance Corporation (pursuant to War Assets Reg. 1, Order 14 (14 F. R. 2948), dated June 4, 1949) conveyed the property in question to the United States of America. The deed was recorded with the Register of Passaic County, in Book K53 of Deeds, page 14.

On August 14, 1951, the United States of America, acting by and through the Administrator of General Services conveyed title to the properties to the Ringwood Iron Mines, Inc. In order to secure the balance of the purchase price, the Administrator of General Services, acting for and on behalf of the United States of America, as mortgagee, took back a note and purchase money mortgage in the sum of $1,400,000.00. The deed, transferring title and the purchase money mortgage, as security, were duly recorded in the Office of the Clerk of the County of Passaic, New Jersey (A4a, A53a).

The mortgage between the private corporation and the General Service Administrator contained provisions in respect of the payment of municipal taxes and assessments: the General Services Administrator, as mortgagee, reserved the right, in the event of default in the payment of taxes, to make the payments; and to charge the said private corporation to the extent thereof. The mortgage contained a forfeiture provision in the event of failure to pay the tax by its mortgagor (A54a, A55a).

The operation of the mines by the Ringwood Iron Mines Inc., was not successful, and as a result liabilities were incurred, in the successive years that followed, for unpaid taxes due to the Borough. Unpaid taxes accrued for part of 1953, and for the successive years, until the present date.

The first payment due on the mortgage was February 14, 1953. There was a default in this payment, which required only the payment of interest in the amount of $50,000.00. Payment was made in the sum of $35,000.00 (A6a, par. 5). No other payments were made on the original mortgage or note (A6a).

On March 5, 1954, the $15,000.00 balance due from the payment, defaulted the year before, was deferred by agreement by the mortgagor and the mortgagee in the form of a letter between mortgagor and the Government. This Agreement was that payments of $3,000.00 per month would be made beginning March 15, 1954. The same agreement deferred payment of an installment of $150,000.00 which had been due on February 14, 1954 and which was also defaulted. This default was modified to provide for its payment in equal installments annually beginning February 14, 1955, a year hence. No further payments were made (A6a, pars. 6, 7).

Another Agreement was executed on December 31st, 1954, modifying the payments provided in the original note, as amended, to a system of payment of the balance, by royalty agreement (A6a, par. 8).

The purpose of the Agreement was to excuse the previous delinquencies, and it was conditioned upon Ringwood Iron Mines, Inc., obtaining new capital by June 30, 1955. Default was made in this Agreement; and on October 6, 1955, the extended June 30, 1955 date was further extended until March 31, 1956 (A6a, par. 8).

Between October 20, 1955 and October 26, 1955 all insurance policies covering the property were cancelled by the insurance carriers (A7a-10).

On November 1, 1955, an inspection of the mines by the General Service Administration revealed that the property was not being properly maintained. On November 16, 1955, the Administration was informed by representatives of the Ringwood Iron Mines that the company was unable to carry on operations (A6a, A7a).

On November 30, 1955, notice was given to the mortgagee that the mortgagor was unable to continue to employ personnel on the property after December 2, 1955 (A7a, par. 13).

On December 2, 1955, the General Service Administration, in accordance with permission received, installed its own personnel to provide interim protection and maintenance (A8a, par. 14).

By instrument dated November 29, 1955, Ringwood Iron Mines, Inc., waived notice by writing of the default of the mortgagee, and consented to the bringing of foreclosure proceedings without giving notice of default.

During these periods of defaults and modifications, consecutive assessments were made by the Tax Assessor for the Borough of Ringwood against the property in question, in accordance with the New Jersey Statutes (N.J.S.A. 54:4-1, N.J.S.A. 54:4-23). On January 1st, 1953, and on each January 1 date thereafter, municipal liens for unpaid taxes, attached to the property (A48a).

On December 30, 1955, at public auction pursuant to New Jersey Statutes, the Collector of Taxes sold the property in question to the Borough of Ringwood, subject to the equity of redemption. Certificates of sale for unpaid taxes were issued to the Borough (A70a).

On January 23, 1956, the General Services Administration (United States of America) as mortgagee, instituted the action in the United States District Court, District of New Jersey, to foreclose the mortgage lien.

The Government also sought in the same action the appointment of a "receiver of rent, issues and profits of said lands, said receiver to seize, manage and control the lands and chattels thereon with all powers that may be proper for that purpose" (A9a).

On February 7, 1956, a custodial receiver was appointed by the Court (Mr. Arthur C. Bruni); and he acted in such capacity, until his discharge, by court order (A3a). The receiver was discharged on March 15, 1957, after final account had been approved by the Court.

On July 2, 1956, a judgment of foreclosure was entered in the Court, subject to the stipulation between the United States Government and the Borough of Ringwood, Inc. in said judgment to the effect that the issue of priority between the said parties, would be decided by the Court (A51a).

In furtherance of the judgment, in the United States District Court, the mortgaged premises were sold by the United States Marshall at the Office of the Sheriff of Passaic County on December 4, 1956; and the Order confirming the sale was entered on December 14, 1956 (A71a).

The Government purchased the property for the sum of $1,685,367.43, at this sale (A71a).

Reasons Relied Upon for Allowance of the Writ of Certiorari

The decision below should be reviewed because:

1. It is recognized that a prior claimant under the doctrine "first in time, first in right" may be displaced by

some act which shall postpone him in a court of law and equity. Neither *New Britain*[1] nor *Rankin*[2] provide Federal decisional law containing a definitive interpretation of displacement. The case, *sub judice*, provides compelling reasons for invoking displacement against the Government, in favor of the municipality.

2. The lien of the municipality for unpaid taxes should be deemed in law and equity, superior to the Government's mortgage lien. While the Government granted extensions, the municipality proceeded to perfect its lien within the limits of its ability. Prior decisional pronouncements by this Court should not be deemed applicable where the municipality is unable to compete in a race for priority.[3]

3. The promulgation of remedial legislation to provide payments to the Borough in lieu of real estate taxes should have been disposed of in the Court of Appeals. It is manifest in the decision of the United States District Court (P76a), that the subject was considered at length by Judge Modarelli. The decision in the Court of Appeals to the effect that the issue was not before that Court prevented finality of adjudication on the entire controversy. It is contended that this Court should review this aspect of the Court of Appeals' determination and to dispose of the entire controversy between the parties.

4. The Court of Appeals did not deal with petitioner's contention that the Custodial Receiver was an officer of

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[1] *United States* v. *City of New Britain*, 347 U. S. 81, at p. 85, 98 L. Ed. 520 (1954).

[2] *Rankin* v. *Scott*, 12 Wheat. (U. S.) 177, at p. 179, 6 L. Ed. 592 (1827).

[3] *S. R. A. Inc.* v. *State of Minnesota*, 327 U. S. 551, 90 L. Ed. 851 (1946); *City of New Brunswick* v. *United States*, 276 U. S. 274.

the Court—not an instrumentality of the United States, possess no immunity from taxation, under federal organic or decisional law, obliged to pay the municipal taxes and follow the law of the State.[4]

5. The question is one of great public importance. Obliteration of the petitioner's lien for accrued and unpaid taxes constitutes a penalty against the petitioner (who exercised diligence) and a reward for respondent (who created the condition, and whose lack of diligence permitted annual accruals in unpaid taxes). The detriment is compounded when consideration is given to the ever increasing tax burden of municipalities.[5]

I

It was recognized in *New Britain*[6] that the doctrine of

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[4] 28 U.S.C.A. (1940 Ed.) 124 A. 48 Stat. 993, 28 U.S.C.A. 960 subjects any officers and agents conducting a business under the authority of a United States Court to all Federal, State and local taxes to the same extent as if it were conducted by an individual or corporation. See, also: 28 U.S.C. (1940 Ed.) secs. 124, 125, 36 Stat. 104, 28 U.S.C.A. 959(b). Cf: *Palmer v. Webster and Atlas Nat. Bank of Boston*, 312 U. S. 156, 85 L. Ed. 642 (1941), reh. den. 312 U. S. 714, 86 L. Ed. 1145; *The Southern Cross, etc.*, 120 F. 2d 466, 468 (C. C. A. 2, 1941).

[5] *Report of Committee on Taxation and Revenue*, 21 Minn. L. Rev. (NIMLO, 1958); *Miller—State Taxation of Federal Contractors*, 4 J. Pub. L. 299, 302 (1955). Report Released: *United States Department of Commerce—Bureau of the Census* (August, 1957) pp. 1, 2, 14.

[6] 347 U. S. at p. 85; see: *Am. Jur., Liens*, Vol. 33, sec. 33, p. 436; *C. J. S., Liens*, Vol. 53, sec. 10, p. 857. Traditionally, the rule is not absolute, circumscribed by venerable maxims in equity jurisprudence: See: *Pomeroy's Equity Jurisprudence* (5th Ed., 1941) secs. 416, 417, 678; *English Ruling Cases, Equitable Title, Priorities*, Vol. 10, pp. 507-510; *Rice v. Rice*, 2 Drew. 73 (1854).

priority was subject to displacement "by some act of the party holding it which shall postpone him in a Court of Law and Equity to a subsequent claim." This guiding theme was excerpted from *Rankin* v. *Scott*, 12 Wheat. (U. S.) 177, 179, 6 L. Ed. 592 (1827).

The precise issue to be resolved in the instant case compels more definitive interpretation of this theory of displacement. While the municipality proceeded, with all due diligence in the enforcement of its claim (legal title to the premises was in a private corporation); the Government continued liberal extensions to the private corporation of its obligations. Moreover, the mortgage expressly provided for payment of the real estate taxes and contained protective means whereby the Government could insure the payment of local taxes and protect its position—the municipality possessed no such prerogative. The continuance of legal title in the name of the private corporation imposed upon the municipality the absolute obligation of assessing taxes, and of planning its entire fiscal program in conjunction with taxes on the premises in question.[7]

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[7] R.S. 54:4-1 (N.J.S.A.) and 54:4-23 (N.J.S.A.) (as amended 1942) constrain New Jersey tax assessors to ascertain ownership and assess real estate with reference to the amount owned on October first of each year. New Jersey decisional law mandates taxation of property with refevence to its status and ownership as of that date (Accord: *Mayor and Board of Aldermen of Jersey City* v. *Montville*, 84 N. J. L. 43, 85 Atl. 838 (Sup. Ct., 1913), affirmed on opinion below 85 N. J. L. 372, 91 Atl. 1069 (E. & A., 1913); *Jabert Operating Co.* v. *Newark*, 16 N. J. Super. 505, 85 Atl. 2d 216 (App. Div., 1951). The Petitioner had no authority to enlarge the subjects for exemption, in the absence of express legislative authority. Cf: *Teaneck Twp.* v. *Lutheran Bible Institute*, 20 N. J. 86, 118 Atl. 2d 809 (1955). On January 1 of each year, the municipal tax on real estate accrues as a lien on the real estate, according to New Jersey statutes—a paramount lien R.S. 54:5-6, 9 (N.J.S.A.). But cf: *United States* v. *City of New Britain*, *supra* (347 U. S. at p. 84).)

While the Government tolerated repeated defaults of the private corporation, the municipality was prejudiced, and its planned fiscal program suffered. The municipality depends, by local law, solely upon the real property as its method of enforcement for payment of the defaulted taxes; it possessed no right to proceed *in personam* against the owner.[8] The petitioner is a small community. The uncollected tax has serious implications upon its fiscal equilibrium.

II

It is urged that the situation here admits of no logical analogy to the *S.R.A., Inc.-Minnesota or New Brunswick*[9] cases. Here legal title was conveyed by deed to a private corporation. The difference is substantial when it is considered that in the former cases, the municipality may not tax, and annual apportionment of the tax burden among the entire community is planned, at assessment time, accordingly.

In the latter case, the assessment (including the entire fiscal program of the municipality) includes the premises, to which the private corporation holds legal title. To vitiate the taxes accrued, several years later, creates severe financial hardship upon the municipality.

The sale by the Collector of Taxes of Ringwood for unpaid taxes—which preceded any Government action on its

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[8] R.S. 54:4-1 (N.J.S.A.) *United States v. Parcels of Land in Clifton, Passaic County, N. J.*, 57 F. Supp. 381 (D. N. J., 1943).

[9] See, note 3: In the cited cases deed ownership was retained by the Government. See: Dissent—Mr. Justice WHITTAKER, *Detroit v. Murray Corp.*, —— U. S. ——, 2 L. Ed. 2d 441 at p. 456 (1958).

mortgage, was successfully challenged as being of no effect against the Government's mortgage claim.[10]

To apply *New Brunswick* and *S.R.A. Inc.–Minnesota* to these facts, is to construe *New Britain* as creating a race for priority, in which the municipality cannot compete—and can never prevail. Here, all that the municipality was able to do, was done.

III

The Congress is not unmindful of the undue burden upon local taxing authorities when real estate transferred from the Reconstruction Finance Corporation (15 U.S.C. 607) to another Government Department.

To aid the plight of municipalities, against disruption of their operations caused by any such transfers which occurred after January 1st, 1946, payments were directed to be made in lieu of taxes without penalties or penalty interest, covering the taxable periods from January 1st, 1955 through December 31st, 1598. The evidence of the legislative intent is embodied in 69 Stat. 722, 40 U.S.C.A. 521:

> "The Congress recognizes that the transfer of real property having a taxable status from the Reconstruction Finance Company any of its subsidiaries or to another Government Department has often operated to remove such property from the tax rolls of States and local taxing authorities, thereby creating an undue and unexpected burden upon such States and local taxing authorities and causing disruption of their operations. It is the purpose of this subchapter to furnish tem-

[10] R.S. 54:5-19 (N.J.S.A.) *et seq.* provides for the method of enforcement of the tax lien by sale, subject to an equity of redemption to be exercised within 2 years from the sale, and until cut off. R.S. 54:5-54 (N.J.S.A.).

porary measures of relief for such States and local taxing authorities by providing that payments in lieu of taxes shall be made with respect to real property so transferred on or after January 1, 1946. June 30, 1949, c. 288, Title VII Sec. 701, as added Aug. 12, 1955, c. 874, Sec. 3, 69 Stat. 722."

The statutory direction is stated in 69 Stat. 722, 40 U.S.C.A. 523:

"Where real property has been transferred on or after January 1, 1946, from the Reconstruction Finance Corporation to any Government department, and the title to such real property has been held by the United States continuously since such transfer, then on each date occurring on or after January 1, 1955, and prior to January 1, 1959, on which real property taxes levied by any State or local taxing authority with respect to any period become due, the Government Department which has custody and control of such real property shall pay to the appropriate State and local taxing authorities an amount equal to the amount of the real property tax which would be payable to each such State or local taxing authority on such date if legal title to such real property had been held by a private citizen on such date and during all periods to which such dates relates. June 30, 1949, c. 288 Title VII Sec. 703, as added Aug. 12, 1955, c. 874 Sec. 3, 69 Stat. 722."

The statute is worthy of liberal consideration in view of its intended objective. The United States District Court considered another section of the same Act, and determined it was inapplicable (A76a to A77a). The Court there apparently failed to recognize the existence of the Statute relied upon here.

The Court of Appeals expressed the view that the subject was not before the Court. It is urged that the entire controversy between the parties should have been and could have been disposed of in this unit of litigation. Review is respectfully requested so that the entire controversy may achieve its finality. No additional evidence is necessary to determine applicability of the statute. Here, the minimum standard in the disposition of the controversy appears to justify a complete adjudication, on all issues.

IV

It is firmly established that when the United States comes into court in equity or to foreclose its mortgage lien, it assumes the stature of an ordinary suitor. This postulate seems well-settled, in Federal organic law.[11]

28 U. S. C., 1940 Ed., 124 A. 48 Stat. 993; 28 U.S.C.A. 960 provides:

> "Any officer and agents conducting any business under authority of a United States Court shall be subject to all Federal, State and local taxes applicable to such business to the same extent as if it were conducted by an individual or corporation. (June 25, 1948)"

In respect of the obligations of a receiver to manage and control the property according to state law, where the property is situate, Congress was specific (28 U. S. C., 1940 Ed., Secs. 124, 126, 36 Stat. 104; 28 U.S.C.A. 959 (b)):

> "A trustee, receiver or manager appointed in any cause pending in any Court of the United States, including a debtor in possession, shall manage and operate the

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[11] See, note 4: *Botcler* v. *Ingels*, 308 U. S. 57, 61, 86 L. Ed. 1145 (1939); *In re Lochr*, 98 F. Supp. 402 (D. Wis., 1950): Annotation: 3 A.L.R. 2d 894, sec. 1, 143 A.L.R. 984.

> property in his possession as such trustee, receiver * * * according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof."

The principal intention of the Congress was to subject a business in receivership to the same liability as the owner would have been if in possession and operating the same. It seems manifest that property in the custody or control of a receiver appointed by the Court is not thereby exempted from taxation by the authority within whose jurisdiction the property is situated.[12] Here, the Government should acquire no favored position.

V

The postulates of Federal immunity from local taxation enunciated by this Court in 1819, are neither challenged nor jeopardized by a determination awarding to the petitioner its unpaid taxes.

McCulloch v. *Maryland*[13] did not set forth a rule banning all local taxation which might adversely effect the Federal Government, nor has it been interpeted so broadly by this Court.[14] Various local taxes assessed against private corporations have been sustained even though

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[12] *The Southern Cross, etc., supra* (120 F. 2d at p. 467).

[13] 4 Wheat. (U. S.) 316 (1819). Mr. Justice FRANKFURTER has indicated the error of a conceptual approach to *M'Culloch*, in *Graves* v. *New York et rel. O'Keefe*, 306 U. S. 466, 487 (1939).

[14] *United States* v. *Detroit*, —— U. S. ——, 2 L. Ed. 424, at pp. 427, 430; *United States* v. *Township of Muskegon*, —— U. S. ——, 2 L. Ed. 2d 436, at p. 438; *Detroit* v. *Murray Corp.*, —— U. S. ——, 2 L. Ed. 441, at pp. 444, 445 (March 3, 1958).

their effect ultimately was to impose some economic burden on the Federal Government.[15]

The considerations which motivate upholding the petitioner's right to the taxes assessed are bottomed on more persuasive considerations.

It is submitted that a municipality is constrained to assess taxes by the force of its obligations to the State (of which it is an integral part) and it was placed in that position by the selection of the security transaction by the government agency.

A large accumulation of unpaid taxes is the consequence of continued tolerated defaults by the Federal Government. The wiping out of the accrued taxes, years after accrual, is greatly prejudicial. This, it is urged, becomes an issue of great public concern, which this Court is respectfully requested to review.

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[15] The trend has been to reject immunizing private parties from non-discriminating state taxes. Cf: *Penn-Dairies* v. *Milk Control System*, 318 U. S. 261 at p. 270; 87 L. Ed. 748, at p. 753.

In *Murray Corp., supra* (2 L. Ed. at p. 445), it was reasoned:

"Consequently in determining whether these taxes relate to the Government's constitutional immunity we must look through form and behind labels to substance. This is at least as true to uphold a state tax as to strike one down. * * * Due regard to the State power to tax requires no less. * * *"

CONCLUSION

It is respectfully submitted that the questions raised in the case, *sub judice*, are of sufficient gravity and importance to urge this Court to issue a writ of certiorari to the United States Court of Appeals for the Third Circuit, to review its decision.

Respectfully submitted,

WALLISCH AND WALLISCH,
Attorneys for Petitioner.

LOUIS WALLISCH, JR.,
AND
AARON DINES,
Of Counsel.

APPENDIX

Docket Entries

1-24-56 Complaint, filed 1-23-56

1-24-56 Summons issued

1-24-56 Notice of Allocation and Assignment, filed (Newark—Modarelli)

2- 8-56 Petition for appointment of Receiver, filed 2-7-56

2- 8-56 Order appointing Receiver, filed 2-7-56 (Modarelli)

2-14-56 Affidavit of mailing copy of order appointing Receiver, filed 2-10-56

2-17-56 Summons returned served on Ringwood Iron Mines, Inc., on 1-31-56; served on Borough of Ringwood on 2-14-56, filed 2-16-56

2-21-56 Authorization of attorneys for Borough of Ringwood, filed.

3- 5-56 Bond of Receiver filed.

3- 5-56 Petition for appointment of Counsel filed.

3- 5-56 Order appointing Otto Cooper counsel for receiver, filed (Modarelli). Notice mailed.

3- 7-56 Answer of defendant, Borough of Ringwood, filed 3-6-56.

4-24-56 Consent order to amend complaint, filed 4-23-56 (Modarelli). Notice mailed.

4-26-56 Affidavit of mailing copy of order to amend complaint filed 4-25-56.

4-27-56 Claim of State of N. J. for Corporation Franchise Taxes, filed 4-26-56.

Docket Entries

5- 3-56	Claim of Charles Gebaur filed 4-27-56.
5- 3-56	Claim of George Crissey filed 4-27-56.
5- 3-56	Claim of Thomas Summers, Jr., filed 4-27-56.
5- 3-56	Claim of Robert Summers filed 4-27-56.
5- 3-56	Claim of John Scruggs filed 4-27-56.
5- 3-56	Claim of Thomas J. Summers, Sr., filed 4-27-56.
5- 3-56	Claim of Emanuel Walker filed 4-27-56.
7- 3-56	Ordered application to mark an exhibit re: judgment. Granted. (Modarelli) (7-2-56)
7- 3-56	Judgment for $1,659,139.04 and costs, in favor of United States of America, plaintiff and against Ringwood Iron Mines, Inc.; and for issuance of execution for foreclosure sale of so much of mortgaged premises sufficient to satisfy the judgment; and foreclosing equity of redemption of the Borough of Ringwood and the State of New Jersey filed 7-2-56. (Modarelli) Notice mailed.
7- 3-56	Statement of plaintiff's costs taxed at $48.40 filed.
10-19-56	Writ of Execution issued and recorded in Book K. of Executions, Page 71
11-19-56	Affidavit of posting Notices of Sale, filed 11-16-56
12-11-56	Marshal's Report of Sale filed 12-19-56
12-13-56	Proofs of Publication filed 12-10-56
12-14-56	Order confirming sale filed 12-12-56 (Modarelli)
1- 4-57	Copy of order confirming sale with Marshal's return thereon filed 1-3-57.

Docket Entries

1- 8-57	Plaintiff's notice of motion for priority to mortgage lien of U. S. etc returnable 1-14-57 filed 12-31-56. No brief submitted.
1- 8-57	Affidavit of service of copy of notice of motion for priority to mortgage lien of U. S. filed 12-31-56.
1-15-57	Hearing on plaintiff's motion to grant priority to mortgage lien, and cut off subsequent municipal tax lien of the Borough of Ringwood. Decision Reserved. (Modarelli) (1-14-57)
1-18-57	Writ of Execution returned executed, filed 1-17-57
2-28-57	Final Report and Account of Receiver filed 2-27-57.
2-28-57	Order to Show Cause re: Final Report and Account of Receiver, filed 2-27. (Modarelli) (ret. 3-15-57)
3-14-57	Amended Final Report and Account of Receiver, filed.
3-14-57	Affidavit of Arthur C. Bruni, filed.
3-14-57	Affidavit of Service of Order to show cause, etc., filed.
3-18-57	Hearing on order to show cause re: final report of receiver for discharge and allowances. Order submitted. No objections to discharge. (Modarelli) (3-15-57)
3-18-57	Final Order approving report and account, etc., discharging receiver filed 3-15-57. (Modarelli) Notice mailed.
4-26-57	Trustee's Statement of Distribution, filed 4-25-57

5- 9-57	Opinion, filed 5-8-57 (Modarelli) (Granting plaintiff's motion to grant priority to mortgage lien, etc.) (Copy forwarded to U. S. Attorney General).
5-24-57	Order granting United of America priority to mortgage lien, etc., without costs, filed 5-22-57 (Modarelli). Notice mailed.
6-25-57	Notice of Appeal, filed 6-20-57
6-25-57	Bond on Appeal, filed 6-20-57
6-25-57	Copies of notice of appeal forwarded to Clerk, USCA, and to U. S. Attorney.
7-17-57	Record on Appeal forwarded to Clerk, USCA.
8-29-27	Transcript of hearing on plaintiff's motion re: priority to mortgage lien filed 8-28-57.

Complaint

The United States of America, by Raymond Del Tufo, Jr., United States Attorney for the District of New Jersey, by Eugene M. Friedman, Assistant United States Attorney, brings this action of a civil nature against the above-named defendants and alleges and respectfully shows to the Court that:

1. At all times hereinafter mentioned the General Services Administration was an administrative agency of the United States of America.

2. On or about August 14, 1951 Ringwood Iron Mines, Inc., a New Jersey corporation, for the purpose of securing the sum of $1,400,000.00, executed and delivered to the Administrator of the General Services Administration, acting for and on behalf of the United States of America, plain-

tiff herein, its note bearing the date of August 14, 1951, signed by the president of the corporation and attested by the secretary thereof, whereby the said Ringwood Iron Mines, Inc. did bind itself to pay the sum of $1,400,000.00 with interest thereon at the rate of 4 per cent per annum, principal and interest payable in installments. The terms of payment are set forth in Schedule A attached hereto.

3. As collateral security for the payment of the note, Ringwood Iron Mines, Inc. executed and delivered a purchase money mortgage, hereinafter called "mortgage", dated August 14, 1951 and recorded August 17, 1951 at Book Z-30, page 467 in the Office of the Clerk of Passaic County, New Jersey, whereby it mortgaged to the United States of America the premises in said mortgage bounded and described more fully in Schedule B attached hereto and by reference incorporated herein. The mortgage was similarly recorded as a chattel mortgage at Book W-14, page 351.

4. Both the note and mortgage contained a condition that upon any default in payment of interest or any installment, plaintiff, at its option, may declare the entire indebtedness to be due and payable. The mortgage further provided that upon the failure of the mortgagor to pay taxes or other assessments within the terms set forth, the principal sum should likewise become due and payable; that the mortgagor would keep the premises in good repair and not suffer or permit any waste; that the mortgagor would keep the property insured against loss by damage or fire in such manner and with such companies and for such amounts as may be satisfactory to the United States; and that the mortgagor would pay the installments when due under the terms of the original note.

5. The first payment under the note and mortgage became due on February 14, 1953. The installment due on

that date was the sum of $50,000.00 and represented only interest. Defendant, Ringwood Iron Mines, Inc., made a payment of $35,000.00 at that time. No other payments were made under the original note and mortgage.

6. By letter agreement dated March 5, 1954, the $15,000.00 balance due on the mortgage payment due February 14, 1953 was deferred and was to be paid at the rate of $3,000.00 per month beginning March 15, 1954. The same letter agreement deferred an installment of $150,000.00 which became due on February 14, 1954 and provided for its liquidation by equal annual payments beginning February 14, 1955.

7. No payments have been made under the letter agreement of March 5, 1954.

8. By further agreement made as of December 31, 1954, the note and mortgage were modified to substitute for the method of payment provided by the original note as amended by the letter agreement of March 5, 1954, a system for payment of the balance due by royalty agreements. The purpose of that agreement was to excuse the previous delinquencies, but was expressly conditioned upon Ringwood Iron Mines, Inc. obtaining certain new capital by June 30, 1955. Upon failure to obtain the additional capital, the agreement provided that the former method of payments set forth in the original note would become reinstated. The June 30, 1955 date was further extended to March 31, 1956 by letter agreement dated October 6, 1955.

9. An inspection of the premises on November 1, 1955 by representatives of the General Services Administration disclosed that the mines were flooded and were not being properly maintained. By letter dated November 14, 1955,

Ringwood Iron Mines, Inc. was requested to pump the mines, and to make other necessary corrective steps. Some pumping was done, but it was insufficient to correct the difficulties, and the General Services Administration has been informed that the present flooding conditions constitute a serious threat to the property.

10. Between October 20, 1955 and October 26, 1955, all insurance policies covering the property were cancelled by the insurance carriers. Those policies have not been renewed despite the demand made by letter of November 10, 1955 from the General Services Administration.

11. On November 16, 1955, the General Services Administration was informed by representatives of Ringwood Iron Mines, Inc. that the company was unable to carry on operations.

12. Ringwood Iron Mines, Inc. has failed to pay real estate taxes due and owing to the Borough of Ringwood. The schedule of taxes due and owing and the periods for which they are due are set forth in Schedule C attached hereto. The United States of America alleges that any claim on the part of the Borough of Ringwood for taxes due is subordinate to the lien of the United States advanced herein.

13. On November 30, 1955, the General Services Administration was informed that because of lack of funds, Ringwood Iron Mines, Inc. was unable to continue to employ personnel on the property after December 2, 1955. This information was confirmed by letter dated December 1, 1955.

14. By letter dated December 1, 1955, permission was given by the Ringwood Iron Mines, Inc. for representa-

tives of the Government to enter upon the property. Pursuant to that permission, the General Services Administration installed its own personnel on December 2, 1955 to provide interim protection and maintenance pending the possible appointment of a receiver.

15. The United States of America, therefore, alleges that the defendant, Ringwood Iron Mines, Inc., has breached in the following manner:

(a) It did not continuously maintain insurance policies required to protect the premises against loss by damage or fire.

(b) It suffered waste of the property and has permitted it to become lessened, diminished and impaired.

(c) It did not pay promptly all installments of principal and interest as they became due according to the provisions of the aforementioned note and mortgage and modifications thereof.

(d) It did not pay taxes or other assessments as set forth in the note and mortgage.

16. Plaintiff alleges that as a result of the breaches of the mortgage agreement set forth above and in view of the failure of the defendant, Ringwood Iron Mines, Inc. to comply with the terms of the letter agreements providing for extensions of time, the original terms of the mortgage became reinstated.

17. By instrument dated November 29, 1955, Ringwood Iron Mines, Inc. waived notice by writing or otherwise upon any default with the terms, covenants, conditions and provisions of the note and mortgage and consented to the bringing of foreclosare proceedings without the giving of any notice of default referred to in the mortgage as amended.

18. The United States of America further alleges that as a result of the defendant's failure to pay the installments and interest as provided, there is due and owing to the United States the sum of $1,365,000.00, plus interest from August 14, 1951 to the present date at the rate of 4 per cent per annum.

19. No proceedings have previously been brought to foreclose this mortgage or for the recovery of the indebtedness evidenced by the mortgage.

WHEREFORE in accordance with the foregoing, the United States of America prays for judgment

(a) Fixing the amount due on the aforesaid mortgage.

(b) Barring and foreclosing the defendants and each of them from all equity of redemption in and to said lands.

(c) Directing that plaintiff be paid the amount due on its mortgage with interest and costs.

(d) Decreeing that said lands be sold according to law to satisfy the amount due plaintiff.

(e) Appointing a receiver of rents, issues and profits of said lands, said receiver to seize, manage and control the lands and chattels thereon with all powers that may be proper or necessary for that purpose.

(f) In the event the net proceeds of the sale held according to the judgment prayed for herein are insufficient to pay in full the indebtedness secured by the mortgage, the court issue a decree of deficiency against the defendant, Ringwood Iron Mines, Inc. for such portion thereof as remains unpaid.

RAYMOND DEL TUFO, JR.,
United States Attorney,
BY EUGENE M. FRIEDMAN,
Assistant United States Attorney

Schedule A, Annexed to Complaint

Due Date	*Balance Due*	*Interest Payment*	*Principal Payment*	*Total Payment*
February 14, 1953	$1,400,000.00	$50,000.00	—	$ 50,000.0
February 14, 1954	1,340,000.00	90,000.00	$60,000.00	150,000.0
February 14, 1955	1,293,600.00	53,600.00	46,400.00	100,000.0
February 14, 1956	1,245,344.00	51,744.00	48,256.00	100,000.0
February 14, 1957	1,195,157.76	49,813.76	50,186.24	100,000.0
February 14, 1958	1,142,964.07	47,806.31	52,193.69	100,000.0
February 14, 1959	1,088,682.63	45,718.56	54,281.44	100,000.0
February 14, 1960	1,032,229.94	43,547.31	56,452.69	100,000.0
February 14, 1961	973,519.14	41,289.20	58,710.80	100,000.0
August 14, 1961	—	19,470.38	973,519.14	992,989.5
Totals:		$492,989.52	$1,500,000.00	$1,992,989.5

Schedule B, Annexed to Complaint

First Tract

Beginning at a railroad rail on the Easterly line of the lands of Ringwood Company being the seventh corner of Sarah Amelia Hewitts six hundred thirteen and seventy-five hundredths Acre Farm as described in deed from Edmund H. Miller and wife, Edward Cooper and wife, and Abram S. Hewitt to Sarah Amelia Hewitt dated May 1, 1866 and recorded in the Passaic County Register's Office in Book B-3 of Deeds at page 34, being also the Northwest corner of lands of Green Engineering Camp and the Southwest corner of lands of the State of New Jersey; and running thence (1) North thirty-five (35) degrees fifty (50) minutes thirty-seven (37) seconds East along the said lands of the State of New Jersey six thousand three hun-

dred forty-seven feet and ninety hundredths of a foot (6347.90′) to the New York & New Jersey State Line; thence (2) North sixty (60) degrees thirty (30) minutes West along said State Line two hundred fifty feet (250′) to the Southwesterly Corner of the Vail or Snyder Place; thence (3) North fifty-six (56) degrees fifty (50) minutes West along said State Line two thousand twenty-eight feet and ninety-hundredths of a foot (2028.90′) to a three inch pipe monument at the Northeasterly corner of lands now or formerly of Tuxedo Houses, Incorporated; thence (4) in a general Southwardly direction along said lands now or formerly of Tuxedo Houses, Incorporated, the following four courses: South thirty (30) degrees forty-two (42) minutes fifty-five (55) seconds West one thousand six hundred thirty-eight feet and sixty hundredths of a foot (1638.60′) to a three inch pipe monument; North fifty-nine (59) degrees fifty-five (55) minutes fifty-two (52) seconds West two hundred fifty feet and twenty hundredths of a foot (250.20′) to a three inch pipe monument; South seventy-one (71) degrees one (1) minute four (4) seconds West two thousand two hundred ten feet and thirty hundredths of a foot (2210.30′) to a three inch pipe monument and South eighteen (18) degrees twenty-two (22) minutes thirty-seven (37) seconds West six thousand nine hundred ninety-eight feet (6998′) to a three inch pipe monument at the Southeasterly corner of said lands now or formerly of Tuxedo Homes, Incorporated; thence (5) South thirty-two (32) degrees nineteen (19) minutes twenty-two (22) seconds West through lands of said Ringwood Company three thousand three hundred nineteen feet (3319′) to a corner of lands of the North Jersey District Water Supply Commission; thence (6) South fifty-six (56) degrees thirteen (13) minutes thirty (30) seconds East along lands of said North Jersey District Water Commission three thousand one hundred eighty-two feet and twen-

ty hundredths of a foot (3182.20') to a corner of the same; thence (7) North twenty-two (22) degrees sixteen (16) minutes thirty (30) seconds East five thousand five hundred four feet and forty hundredths of a foot (5504.40') still along lands of the North Jersey District Water Supply Commission to a corner common to said North Jersey District Water Supply Commission and said Green Engineering Camp; thence (8) in a general Northwardly direction along said lands of said Green Engineering Camp the following two courses: North twenty-two (22) degrees thirty-nine (39) minutes twenty-one (21) seconds East forty feet and forty-one one-hundredths of a foot (40.41') to a railroad rail and North eighteen (18) degrees thirty-eight minutes forty-three (43) seconds East one thousand eight hundred two feet and two hundredths of a foot (1802.02') to the point or place of BEGINNING.

EXCEPTING, however, from the above described land the following:

BEGINNING at the corner formed by the intersection of the Westerly side of the Erie Railroad's right of way and the Northerly side of the road leading from Hewitt to Ringwood; running thence along the Northerly side of said road North seventy-seven (77) degrees twenty (20) minutes West one hundred eight-six feet and thirteen hundredths of a foot (186.13') to an iron plug; thence North six (6) degrees thirty (30) minutes East two hundred seventy-five feet (275') to an iron plug; thence South eighty-three (83) degrees thirty (30) minutes East one hundred nineteen feet (119') more or less to an iron plug; thence south seventeen (17) degrees fifteen (15) minutes West one hundred twenty-two feet (122') more or less to an iron plug; thence South seventy-two (72) degrees five (5) minutes East thirty-five feet and thirty-nine hundredths of a foot (35.39') to an iron plug in the Westerly line of the Erie

Railroad's right of way; thence Southwardly in a curved line along the Westerly line of said right of way to the point or place of BEGINNING.

ALSO EXCEPTING from the land above described the following:

BEGINNING at a point on the center line of Ringwood Avenue distant in a generally Westerly direction eight hundred fifteen feet and ninety hundredths of a foot (815.90') along the center line of said Avenue from the intersection of same with the center line of the Erie Railroad Branch to Peters Mine; and running thence (1) south thirteen (13) degrees thirty (30) minutes East a distance of eleven feet (11') more or less to the Northwest corner of the parcel conveyed to Right Reverend John Joseph O'Connor, Bishop of the Diocese of Newark, New Jersey, of the Roman Catholic Church by the Ringwood Company by Deed dated February 10, 1917; thence (2) continuing in the same direction South thirteen (13) degrees thirty (30) minutes East along the Westerly side of said above mentioned parcel a distance of one hundred feet (100') even to the Southwest corner of said parcel; thence (3) North seventy-six (76) degrees thirty (30) minutes East along the South side of said parcel and the Southerly side of the parcel conveyed to St. Catherine of Bologna by the Ringwood Company by deed dated July 2, 1940 a distance of three hundred feet (300') even to the Southeast corner of said second parcel referred to; thence (4) North thirteen (13) degrees thirty (30) minutes West along the Easterly line of said second parcel referred to a distance of two hundred feet (200') more or less to the center line of Ringwood Avenue; thence (5) Southwesterly along the center line of Ringwood Avenue a distance of three hundred thirteen feet (313') more or less to the point or place of BEGINNING.

Schedule B, Annexed to Complaint

SECOND TRACT

ALL RIGHT to the ore and mineral from and all its right, title and interest of, in, to and under ALL THAT CERTAIN tract or parcel of land situate, lying and being in the Borough of Ringwood, in the County of Passaic and State of New Jersey.

BEGINNING at a railroad rail on the Easterly line of the lands of the Ringwood Company, being the seventh corner of Sarah Amelia Hewitt's 613.75 acre farm as described in deed from Edmund H. Miller and wife, Edward Copper and Wife, and Abram S. Hewitt to Sarah Amelia Hewitt dated May 1, 1866 and recorded in the Passaic County Register's Office in Book B-3 of Deeds at page 34, being also the Northwest corner of lands of Green Engineering Camp and the Southwest corner of land of the State of New Jersey; and running thence (1) North thirty-five (35) degrees fifty (50) minutes thirty-seven (37) seconds East along the dividing line between said lands of Ringwood Company and said lands of the State of New Jersey six thousand three hundred forty-seven feet and ninety hundredths of a foot (6347.90') to the New York-New Jersey State Line; then (2) South sixty (66) degrees thirty (30) minutes East along said State Line one thousand fifteen feet (1015') to a stake standing two feet (2') above ground and being fifty-one feet and seven hundredths of a foot (51.07') Northwestwardly along said State Line from the twenty-first milestone; thence (3) South nine (9) degrees twenty-two (22) minutes West through the said lands of the State of New Jersey two thousand eight hundred thirty-seven feet and ten hundredths of a foot (2837.10') to a point marked by a fourteen inch chestnut stump in the center of a stone pile, now marked by a six inch chestnut stake; thence (4) South seventy-four (74) degrees fifty-seven (57) minutes West still through said lands of the State of New Jersey

one thousand eight hundred seventy feet and eighty hundredths of a foot (1870.80′) to an eight inch stake standing one foot (1′) above ground and being on the North bank of Drink Brook; thence (5) South forty-three (43) degrees twenty-eight (28) minutes West through said lands of the State of New Jersey and lands of Green Engineering Camp four thousands two hundred twenty-seven feet and sixty hundredths of a foot (4227.60′) to a railroad rail in the Easterly line of said lands of Ringwood Company; thence (6) North eighteen (18) degrees thirty-eight (38) minutes forty-three (43) seconds East along the dividing line between said lands of Ringwood Company and said lands of Green Engineering Camp one thousand eight hundred two feet and ninety-two hundreds of a foot (1802.92′) to the point or place of BEGINNING.

BEING the same premises heretofore conveyed to Defense Plant Corporation by Deed from Ringwood Company, a New Jersey Corporation Norvin H. Green and Irene Pierce Green, his wife, dated December 1, 1942 and Recorded December 10, 1942 in the Passaic County Register's Office in Book K-43 of Deeds, Page 157, and by Deed from Ringwood Company, a New Jersey Corporation, to Defense Plant Corporatioa, dated December 1, 1942 and recorded December 10, 1942 in the Passaic County Register's Office in Book K-43 of Deeds, Page 160.

THIRD TRACT

ALL MINES, minerals and ores and all combinations of minerals and ores in and under that certain tract or parcel of land, hereinafter particularly described, situate, lying and being in the Borough of Ringwood, in the County of Passaic and State of New Jersey:

BEGINNING at a railroad rail marking the termination of

the fourth course (viz. South eighteen (18) degrees thirty-eight (38) minutes forty-three (43) seconds West along the lands of the said Ringwood Company one thousand eight hundred two feet and two hundredths of a foot (1802.02′) etc.) in a certain deed from Norvin H. Green and wife, to The Cooper Union for the Advancement of Science and Art, dated January 29, 1940 and recorded January 31, 1940 in Deed Book K-41 page 51; thence (1) along the fifth course of said deed South twenty-two (22) degrees thirty-nine (39) minutes twenty-one (21) seconds West forty feet and forty-one one-hundredths of a foot (40.41′) to a corner of lands of the North Jersey District Water Supply Commission; thence (2) along the same North seventy-five (75) degrees twenty-four (24) minutes twenty-eight (28) seconds East forty feet and no hundredths of a foot (40.00′); thence (3) along the same South sixty-one (61) degrees six (06) minutes thirty-two (32) seconds East one hundred forty-three feet and sixty hundredths of a foot (143.60′); thence (4) along the same South fifty-seven (57) degrees four (04) minutes thirty-two (32) seconds East one hundred eighty-nine feet and fifty hundredths of a foot (189.50′); thence (5) along the same South sixty-seven (67) degrees twenty-nine (29) minutes thirty-two (32) seconds East one hundred fourteen feet and ninety hundredths of a foot (114.90′); thence (6) along the same South forty-one (41) degrees twenty-one (21) minutes thirty-two (32) seconds East forty-seven feet and forty hundredths of a foot (47.40′); thence (7) along the same Southe fifteen (15) degrees forty-one (41) minutes thirty-two (32) seconds East eighty-six feet and seventy hundredths of a foot (86.70′); thence (8) along the same South twenty-two (22) degrees fifty-three (53) minutes thirty-two (32) seconds East one hundred eighty-seven feet and ten hundredths of a foot (187.10′); thence (9) along the same South twenty (20) degrees twenty (20)

minutes thirty-two (32) seconds East one hundred sixty-four feet and forty hundredths of a foot (164.40′); thence (10) along the same South thirty-two (32) degrees five (05) minutes thirty-two (32) seconds East ninety-four feet and thirty-two hundredths of a foot (94.32′); thence (11) through lands of Green Engineering Camp, North forty-three (43) degrees twenty-eight (28) minutes East two thousand four hundred seventy-five feet and fifty-three hundredths of a foot (2475.53′) to a point in the line of lands of the State of New Jersey; thence (12) along the same North nine (9) degrees sixteen (16) minutes twenty-three (23) seconds West six hundred forty-five feet and ninety hundredths of a foot (645.90′); thence (13) along the same North eighty-eight (88) degrees thirty-two minutes fifty-five (55) seconds West six hundred fifty-four feet and four hundredths of a foot (654.04′); thence (14) again through lands of Green Engineering Camp, south forty-three (43) degrees twenty-eight (28) minutes West two thousand three hundred seventeen feet and five hundredths of a foot (2317.05′) to the point or place of BEGINNING.

Together with the right to take all usual, necessary or convenient means for finding, working, getting, laying up, dressing, making merchantable and taking away the said mines, minerals and ores and all combinations of minerals and ores, together with the right to excavate, remove and take out the said mines, minerals and ores and all combinations of minerals and ores, but in such manner as not to disturb or disfigure or injure the surface of the soil, or any trees or plants growing thereon, or any building or other structures erected thereon.

BEING the same premises heretofore conveyed by Green Engineering Camp, a New Jersey Corporation, to Defense Plant Corporation by Deed dated March 22, 1943 and re-

corded May 7, 1943 in the Passaic County Register's Office in Book Q-43 of Deeds Page 167.

FOURTH TRACT

ALL THAT CERTAIN tract or parcel of land situate, lying and being in the Borough of Ringwood, in the County of Passaic and State of New Jersey:

BEGINNING at a point on the Easterly Boundary of lands of Defense Plant Corporation, formerly of Ringwood Company, which point is distant Southwesterly along the same two hundred thirty-four feet and six tenths of a foot (234.6') from the terminus of course "7" in Deed from Ringwood Company and Norvin H. Green and Irene Pierce Green to Defense Plant Corporation, dated December 1, 1942 and recorded in the Passaic County Register's Office on December 10, 1942 as Serial No. 128435; running thence (1) Southeasterly along lands now or formerly of North Jersey District Water Supply Commission, on a curve to the left having a radius of five hundred ninety-eight feet and sixty-nine hundredths of a foot (598.69'), sixty-five feet and four tenths of a foot (65.4') to a point; thence (2) South fifty-two (52) degrees forty-three (43) minutes East still along ~~said~~ lands one hundred eighty-eight feet and three tenths of a foot (183.3') to a point of curve; thence (3) Southerly on a curve to the right having a radius of five hundred forty-eight feet and sixty-nine hundredths of a foot (548.69'), an arc distance of two hundred ninety-three feet and seven tenths of a foot (293.7') to a point of tangent; thence (4) South twenty two (22) degrees three (3) minutes East still along said lands five hundred fifty-eight feet and five tenths of a foot (558.5') to a point of curve; thence (5) Southerly on a curve to the right having a radius of five hundred forty-eight feet and sixty-nine hundredths of a foot (548.69') still along said lands four

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hundred twenty-two feet and six tenths of a foot (422.6') to a point of tangent; thence (6) South twenty-two (22) degrees five (5) minutes West still along said lands one thousand one hundred ninety-six feet and eight tenths of a foot (1,196.8') to a point of curve; thence (7) Southerly on a curve to the left having a radius of five hundred ninety-eight feet and sixty-nine hundredths of a foot (598.69') still along said lands an arc distance of four hundred fifty-seven feet and two tenths of a foot (457.2') to a point of tangent; thence (8) South twenty-one (21) degrees forty (40) minutes East still along said lands two hundred eighty feet and fourth tenths of a foot (280.4') to a point of curve; thence (9) Southerly on a curve to the right having a radius of five hundred forty-eight feet and sixty-nine hundredths of a foot (548.69') still along said lands two hundred twenty-four feet and one one-tenth of a foot (224.1') to a point of tangent; thence (10) South one (1) degree forty-four (44) minutes West still along said lands four hundred twenty-six feet and two hundredths of a foot (426.02') to a point in the Easterly line of the Fifth Tract as conveyed by North Jersey Water Supply Commission to New York and Greenwood Lake Railroad Company, recorded in the Passaic County Register's Office in Deed Book H-38 page 168; thence (11) North nineteen (19) degrees nineteen (19) minutes five (5) seconds East one hundred sixty-five feet and six tenths of a foot (165.6') to the Westerly line of the Sixth Tract as conveyed by North Jersey Water Supply Commission to New York and Greenwood Lake Railroad Company, as aforesaid; thence (12) along the same North one (1) degree forty-four (44) minutes East along said lands two hundred sixty-eight feet and twenty-five hundredths of a foot (268.25') to a point of curve; thence (13) Northerly on a curve to the left having a radius of five hundred ninety-eight feet and sixty-nine hundredths of a foot (598.69') along the lands of the said

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North Jersey Water Supply Commission two hundred forty-four feet and five tenths of a foot (244.5′) to a point of tangent; thence (14) North twenty-one (21) degrees forty (40) minutes West still along said lands two hundred eighty feet and four tenths of a foot (280.4′) to a point of curve; thence (15) Northerly on a curve to the right having a radius of five hundred forty-eight feet and sixty-nine hundredths of a foot (548.69′) still along said lands four hundred nineteen feet (419′) to a point of tangent; thence (16) North twenty-two (22) degrees five (5) minutes East still along said lands one thousand one hundred ninety-six feet and eight tenths of a foot (1196.8′) to a point of curve; thence (17) Northerly on a curve to the left having a radius of five hundred ninety-eight feet and sixty-nine hundredths of a foot (598.69′) still along said lands four hundred sixty-one feet and two tenths of a foot (461.2′) to a point of tangent; thence (18) North twenty-two (22) degrees three (3) minutes West still along said lands five hundred fifty-eight feet and five tenths of a foot (558.5′) to a point of curve; thence (19) Northerly on a curve to the left having a radius of five hundred ninety-eight feet and sixty-nine hundredths of a foot (598.69′) still along said lands three hundred twenty feet and four tenths of a foot (320.4′) to a point of tangent; thence (20) North fifty-two (52) degrees forty-three (43) minutes West still along said lands one hundred eighty-eight feet and three tenths of a foot (188.3′) to a point of curve; thence (21) Northerly on a curve to the right having a radius of five hundred forty-eight feet and sixty-nine hundredths of a foot (548.69′) still along said lands eighty feet and seven tenths of a foot (80.7′) to a point in the Easterly line of lands of Defense Plant Corporation; thence (22) along said lands of Defense Plant Corporation Southwesterly fifty-four feet and six tenths of a foot (54.6′) to the point or place of BEGINNING.

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Being the same premises heretofore conveyed by Norvin H. Green and Irene Pierce Green, his wife, and Ringwood Company to Defense Plant Corporation by Deed dated August 4, 1943 and recorded September 9, 1943 in Book U-43 of Deeds for Passaic County, page 94.

Fifth Tract

All and singular those certain pieces or parcels of land situated in the Borough of Ringwood, County of Passaic and State of New Jersey, forming a portion of the former line of Railroad of The New York and Greenwood Lake Railway Company extending northerly from a point near Wanaque-Midvale Station to former Erskine Station, and also a part of the former Ringwood Branch of said Railway Company, and certain right of way along the former so-called Peters Mine Spur, (forming a continuous railroad right of way from said point near Wanaque-Midvale station to said so-called Peters Mine spur) which lines were legally abandoned pursuant to Certificate of Public Convenience and Necessity issued by Division 4 of the Interstate Commerce Commission under date of August 22, 1939, in Finance Docket No. 12443, New York and Greenwood Lake Railway Company et al., Abandonment, 233 I.C.C. 669, together with the rails and other materials thereon, the aforesaid pieces or parcels of land being more fully described as follows, viz:

Parcel No. 1

All that piece or parcel of land included within the limits of a continuous strip of land one hundred (100) feet in width, located fifty (50) feet on either side of the center line of lands known as the former original right of way of The New York and Greenwood Lake Railway Company, said center line beginning on the division line between lands now or formerly of Conrad Tice and wife on the

south and lands now or formerly of Albartis P. Howard on the North, where said division line is intersected by said center line, said point of intersection being northwesterly two thousand seven hundred seventy-four (2774) feet more or less as measured along said center line from the southerly end of the so-called Wanaque-Midvale Station building of said railway; thence northerly from the aforesaid point of intersection and along said center line a distance of one thousand five hundred thirty-one (1531) feet more or less to the intersection of said center line with the division line between lands now or formerly of said Albartis P. Howard on the south, and lands now or formerly of Sophronia H. Beam on the north, containing three and six tenths (3.6) acres, more or less; being the same land conveyed by Cornelius E. Howard and Charles H. Howard, Executors of the Last Will and Testament of Albartis P. Howard to the Montclair Railway Company by deed dated October 19, 1870, recorded in Passaic County Deed Records in Book Z-3, at page 331.

Parcel No. 2

All that piece or parcel of land included within the limits of a continuous strip of land one hundred (100) feet in width, located fifty (50) feet on either side of the center line of lands known as the former original right of way of The New York and Greenwood Lake Railway Company, beginning in the northerly line of Parcel No. 1 hereinbefore described, at the point in the division line between lands now or formerly of Albartis P. Howard on the south, and lands now or formerly of Sophronia H. Beam on the north, where said division line is intersected by said center line; thence northerly from the aforesaid intersection point and along said center line a distance of three thousand nine hundred seventeen feet (3917), more or less, to the intersection of said center line with the division line between

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lands now or formerly of Henry H. Brown on the south, and lands now or formerly of Jacob H. Brown on the north, containing eight and nine hundred ninety-three thousandths (8.993) acres, more or less, being all of the premises and property conveyed to The Montclair Railway Company, as described by deeds hereinafter listed and to which deeds, for a more particular description of the premises and property hereby conveyed, reference is made as follows:

Grantor	*Date*	*Recorded in Passaic County Deed Book*	*Page*
Sophronia H. Beam and David Beam, Executors of Joseph I. Beam, deceased	October 19, 1870	A 4	211
George I. Shorter, et ux.	October 19, 1870	Y 3	563
John M. Sloat, et ux.	October 19, 1870	Y 3	562
William T. VanDine, et ux.	October 19, 1870	Y 3	560
Margaret Bertholf	May 15, 1871	F 4	374
Henry H. Brown	Sept. 4, 1871	F 4	372

Parcel No. 3

Beginning in the Northerly line of Parcel No. 2, herein before described, at the point where the easterly line of lands known as the former original right of way of The New York and Greenwood Lake Railway Company is intersected by the division line between lands now or formerly of Henry H. Brown on the south and lands now or formerly of Jacob H. Brown on the north; thence southwesterly, along said division line, (being the northern boundary line of Parcel No. 2 hereinbefore described), three hundred forty (340) feet, more or less, to a point in the westerly line of lands of said Railway, distanct fifty

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(50) feet westerly, by radial measurement, from the center line of lands known as the former original right of way of said Railway; thence northerly, by a curve to the left concentric with said center line and having a radius of one thousand three hundred eighty-two and sixty-nine hundredths (1382.69) feet, an arc distance of four hundred ninety (490) feet, more or less, to the point of tangency of the westerly line of lands of the former right of way of said Railway, as relocated; thence North thirteen degrees forty-one minutes no seconds West (N. 13° 41' 00" W.) Parallel to and fifty (50) feet westerly at right angles from said last mentioned center line, two hundred fifty-one and twenty-nine hundredths (251.29) feet to a point of curve; thence northerly concentric with said last mentioned center line, on a curve to the right having a radius of two thousand nine hundred fourteen and ninety-three hundredths (2914.93) feet, two hundred fifty-four and sixty-seven hundredths (254.67) feet to a point in the northeasterly line of lands known as the former original right of way of said Railway; thence southeasterly, along said last mentioned line, four hundred sixteen and seven hundredths (416.07) feet to a point in the easterly line of the said former right of way of said Railway as relocated, distant fifty (50) feet easterly, by radial measurement, from said center line of former original right of way; thence southerly, concentric with said last mentioned center line, on a curve to the right having a radius of one thousand four hundred eighty-two and sixty-nine hundredths (1482.69) feet, a distance of two hundred eighty-seven (287) feet, more or less, to the point or place of beginning; Containing one and eleven hundredths (1.11) acres, more or less, being part of the premises conveyed to The Montclair Railway Company by Jacob H. Brown by deed dated October 19, 1870, and recorded in Volume Y-3 at Page 150 of Passaic County Deed Records.

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Parcel No. 4

Beginning in the easterly line of lands known as the former original right of way of The New York and Greenwood Lake Railway Company at the point where said line is intersected by the division line between lands now or formerly of the Board of Education of the Borough of Ringwood and lands now or formerly of Henry H. Brown, said point being distant two hundred thirty (230) feet, more or less, southerly from Mile Post Thirty-three (33) on said former original right of way and four hundred eighty (480) feet, more or less, southerly from Mile Post thirty-three (33) on the former right of way of said railway as relocated and running: thence northwesterly, along said easterly line first above mentioned (being the northerly boundary line of Parcel No. 3 hereinbefore described) four hundred sixteen and seven hundredths (416.07) feet, more or less, to a point distance fifty (50) feet westerly, by radial measurement from the center line of said right of way as relocated; thence northerly be a curve to the right having a radius of two thousand nine hundred fourteen and ninety-three hundredths (2914.93) feet, concentric with said center line five hundred fourteen and eighty-two hundredths (514.82) feet, to a point; thence North one degree twenty-six minutes thirty seconds East (N. 01° 26′ 30″ E.) parallel with said center line, three hundred fifty-one and twenty hundredths (351.20)) f. i. to a point; thence northerly by a curve to the right having a radius of one thousand five hundred seventy-eight and sixteen hundredths (1578.16) feet and being concentric with said center line, nine hundred eighteen and fourteen hundredths (918.14) feet, to a point; thence North thirty-four degrees forty-six minutes thirty seconds East (N. 34° 46′ 30″ E.) parallel with said center line four hundred three and fifty-seven hundredths (403.57) feet, to a point; thence northerly by a curve to the left having a radius of one thousand

five hundred eighty-seven and twenty-eight hundredths (1578.28) feet and being concentric with said center line, eight hundred twenty-three and sixty-three hundredths (823.63) feet, to a point; thence North five degrees two minutes forty seconds East (N. 05° 02′ 40″ E.) parallel with said center line, one thousand two hundred twenty-six and sixty-six hundredths (1226.66) feet to a point; thence North eighty-four degrees fifty-seven minutes twenty second West (N. 84° 57′ 20″ W.) sixty (69) feet, to a point distant one hundred ten (110) feet westerly, by rectangular measurement, from said center line; thence North five degrees two minutes forty seconds East (N. 05° 02′ 40″ E.) parallel with said center line, forty (40) feet, to a point; thence northerly by a curve to the right having a radius of two thousand four hundred two and one hundredths (2402.01) feet and being concentric with said center line, two hundred fifty-one and fifty-four hundredths (251.54) feet, to a point; thence South seventy-eight degrees fifty-seven minutes twenty seconds East (S. 78° 57′ 20″ E.) thirty (30) feet, to a point distant eighty (80) feet westerly, by radial measurement, from said center line; thence northerly by a curve to the right having a radius of two thousand three hundred seventy-two and one hundredth (2372.01) feet and being concentric with said center line, five hundred ninety-six and four hundredths (596.04) feet, to a point; thence South sixty-four degrees thirty-three minutes thirty seconds East (S. 64° 33′ 30″ E.) thirty (30) feet, to a point distant fifty (50) feet westerly, by radial measurement, from said center line; thence northerly by a curve to the right having a radius of two thousand three hundred forty-two and one hundredths (2342.01) feet and being concentric with said center line, three hundred twenty-seven and one hundredths (327.01) feet, to a point; thence North thirty-three degrees twenty-six minutes thirty second East (N. 33° 26′ 30″ E.) parallel with said center

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line, four hundred fifty-six and twenty-two hundredths (456.22) feet to a point; thence northeasterly by a curve to the right having a radius of one thousand nine hundred sixty and eight hundredths (1960.08) feet and being concentric with said center line, seven hundred sixty-nine and seventy-two hundredths (769.72) feet, to a point; thence North thirty-four degrees three minutes thirty seconds West (N. 34° 03′ 30″ W.) thirty-five (35) feet, to a point distant eighty-five (85) feet northwesterly, by radial measurement, from said center line; thence northeasterly by a curve to the right having a radius of one thousand nine hundred ninety-five and eight hundredths (1995.08) feet and being concentric with said center line, one hundred sixty-one and fourteen hundredths (161.14) feet, to a point; thence North sixty degrees thirty-four minutes ten seconds East (N. 60° 34′ 10″ E.) parallel with said center line, one thousand two hundred thirty-seven and eighty-six hundredths (1237.86) feet, to a point; thence northeasterly by a curve to the left having a radius of one thousand five hundred fifty-two and twenty-eight hundredths (1552.28) feet and being concentric with said center line, eight hundred nine and eighty-four hundreths (809.84) feet, to a point; thence North fifty-nine degrees nineteen minutes twenty seconds West (N. 59° 19′ 20″ W.) fifteen (15) feet, to a point distant one hundred (100) feet northwesterly, by radial measurement from said center line; thence northerly by a curve to the left having a radius of one thousand five hundred thirty-seven and twenty-eight hundredths (1537.28) feet and being concentric with said center line three hundred sixty-two and twenty-one hundredths (362.21) feet, to a point; thence North seventeen degrees ten minutes forty seconds East (N. 17° 10′ 40″ E.) parallel with said center line, five hundred sixty-one and thirty hundredths (561.30) feet to a point; thence South seventy-two degrees forty-nine minutes twenty seconds East (S.

72° 49′ 20″ E.) fifty (50) feet, to a point distant fifty (50) feet northwesterly, by rectangular measurement, from said center line; thence North seventeen degrees ten minutes forty seconds East (N. 17° 10′ 40″ E.) parallel with said center line, six hundred five and fifty-seven hundredths (605.57) feet, to a point; thence northeasterly by a curve to the left having a radius of one thousand eight hundred sixty and eight hundredths (1860.08) feet and being concentric with said center line, three hundred ninety-eight and fifty hundredths (398.50) feet to a point; thence North eighty-five degrees five minutes fifty seconds West (N. 85° 05′ 50″ W.) thirty-five (35) feet, to a point distant eighty-five (85) feet westerly, by radial measurement, from said center line; thence northerly by a curve to the left having a radius of one thousand eight hundred twenty-five and eight hundredths (1825.08) feet and being concentric with said center line, six hundred twenty-one and fifteen hundreths (621.15) feet to a point; thence South seventy-five degrees twenty-four minutes ten seconds West (S. 75° 24′ 10″ W.) twenty-five (25) feet, to a point distant one hundred ten (110) feet westerly, by radial measurement, from said center line; thence northerly by a curve to the left having a radius of one thousand eight hundred and eight hundredths (1800.08) feet and being concentric with said center line, six hundred fifty-seven and fifteen hundredths (657.15) feet, to a point; thence North fifty-four degrees twenty-nine minutes ten seconds East (N. 54° 29′ 10″ E.) thirty-five (35) feet, to a point distant seventy-five (75) feet southwesterly, by radial measurement, from said center line; thence northwesterly by a curve to the left having a radius of one thousand eight hundred thirty-five and eight hundredths (1835.08) feet and being concentric with said center line, four hundred fifty-six and forty hundredths (456.40) feet, to a point; thence North forty-nine degrees forty-five minutes fifty seconds West (N. 49° 45′ 50″ W.,

parallel with said center line seven hundred sixty-three and sixty-eight hundredths (763.68) feet, to a point; thence South forty degrees fourteen minutes ten seconds West (S. 40° 14′ 10″ W.) fifteen (15) feet, to a point distant ninety (90) feet southwesterly, by rectangular measurement from said center line; thence North forty-nine degrees forty-five minutes fifty seconds West (N. 49° 45′ 50″ W.) parallel with said center line; one thousand one hundred and fifty hundreths (1101.50) feet, to a point; thence North forty degrees fourteen minutes ten seconds East (N. 40° 14′ 10″ E.) one hundred (100) feet to a point distant ten (10) feet northerly, by rectangular measurement, from said center line; thence South forty-nine degrees forty-five minutes fifty seconds East (S. 49° 51′ 50″ E.) parallel to said center line, five hundred sixty-five and twenty-five hundredths (565.25) feet to a point; thence southeasterly by a curve to the left having a radius of nine hundred three and ninety-five hundredths (903.95) feet, three hundred six and forty-eight hundredths (306.48) feet, more or less to a point distant ninety (90) feet, northerly, by rectangular measurement, from said center line; thence South forty-nine degrees forty-five minutes fifty seconds East (S. 49° 45′ 50″ E.) parallel with said center line, one thousand two and forty-one hundredths (1002.41) feet, to a point; thence southerly by a curve to the right having a radius of two thousand and eight hundredths (2000.08) feet and being concentric with said center line one thousand eight hundred fifty-eight and eighty-five hundredths (1858.85) feet to a point; thence North eighty-six degrees thirty minutes fifty seconds West (N. 86° 30′ 50″ W.) forty (40) feet, to a point distant fifty (50) feet easterly, by radial measurement, from said center line; thence southerly by a curve to the right having a radius of one thousand nine hundred sixty and eighty hundredths (1960.80) feet and being concentric with said center line, four hundred

sixty-eight and thirty-nine hundredths (468.39) feet, to a point; thence South seventeen degree ten minutes forty seconds West (S. 17° 10′ 40″ W.) parallel with said center line, one thousand one hundred sixty-six and eight-seven hundredths (1166.78) feet, to a point; thence southwesterly by a curve to the right having a radius of one thousand six hundred eighty-seven and twenty-eight hundredths (1687.28) feet and being concentric with said center line, five hundred forty-four and eighty hundredths (544.80) feet, to a point; thence North fifty-four degrees nineteen minutes twenty seconds West (N. 54° 19′ 20″ W.) thirty-five (35) feet, to a point distant fifteen (15) feet southeasterly, by radial measurement, from said center line; thence southwesterly by a curve to the right having a radius of one thousand six hundred fifty-two and twenty-eight hundredths (1652.28) feet and being concentric with said center line, seven hundred seventeen and eighty-two hundredths (717.82) feet, to a point; thence South sixty degrees thirty-four minutes ten seconds West (S. 60° 34′ 10″ W.) parallel with said center line one thousand two hundred thirty seven and eighty-six hundredths (1237.86) feet, to a point; thence southwesterly by a curve to the left having a radius of one thousand eight hundred ninety-five and eight hundredths (1895.08) feet and being concentric with said center line, one hundred seventy-nine and seventy hundredths (179.70) feet, to a point; thence South thirty-four degrees fifty-one minutes fifty seconds East (S. 34° 51′ 50″ E.) thirty-five (35) feet, to a point distant fifty (50) feet southeasterly, by radial measurement, from said center line; thence southwesterly by a curve to the left having a radius of one thousand eight hundred sixty and eight hundredths (1860.08) feet and being concentric with said center line seven hundred four and thirty-one hundredths (704.31) feet, to a point; thence South thirty-three degrees twenty-six minutes thirty seconds West (S. 33° 26′ 30″ W.) par-

allel with said center line, four hundred fifty-six and twenty-two hundredths (456.22) feet, to a point; thence southwesterly by a curve to the left having a radius of two thousand two hundred forty-two and one hundredths (2242.01) feet and being concentric with said center line, three hundred thirteen and four hundredths (313.04) feet, to a point; thence South sixty-four degrees thirty-three minutes thirty seconds East (S. 64° 33′ 30″ E.) thirty (30) feet, to a point distant eighty (80) feet southeasterly, by radial measurement, from said center line; thence southerly by a curve to the left having a radius of two thousand two hundred twelve and one hundredth (2212.01) feet and being concentric with said center line five hundred fifty-five and eighty-three hundredths (555.83) feet, to a point; thence South seventy-eight degrees fifty-seven minutes twenty seconds East (S. 78° 57′ 20″ E.) twenty (20) feet, to a point distant one hundred (100) feet easterly, by radial measurement, from said center line; thence southerly by a curve to the left having a radius of two thousand one hundred ninety-two and one hundredths (2192.01) feet and being concentric with said center line, two hundred twenty-nine and fifty-five hundredths (229.55) feet, to a point; thence South five degrees two minutes forty seconds West (S. 05° 02′ 40″ W.) parallel with said center line, four hundred fifteen (415) feet, to a point; thence North eighty-four degrees fifty-seven minutes twenty seconds West (N. 84° 57′ 20″ W.) fifty (50) feet, to a point distant fifty (50) feet easterly, by rectangular measurement from said center line; thence South five degrees two minutes forty seconds West (S. 05° 02′ 40″ W.) parallel with said center line, eight hundred fifty-one and sixty-six hundredths (851.66) feet, to a point; thence southerly by a curve to the right having a radius of one thousand six hundred eighty-seven and twenty-eight hundredths (1687.28) feet and being concentric with said center line eight hundred

seventy-five and fifty-two hundredths (875.52) feet, to a point; thence South thirty-four degrees forty-six minutes thirty seconds West (S. 34° 46′ 30″ W.) parallel with said center line, four hundred three and fifty-seven hundredths (403.57) feet, to a point; thence southwesterly by a curve to the left having a radius of one thousand four hundred seventy-eight and sixteen hundredths (1478.16) feet and being concentric with said center line, eight hundred fifty-nine and ninety-six hundredths (859.96) feet, to a point; thence South one degree twenty-six minutes thirty seconds West (S. 01° 26′ 30″ W.) parallel with said center line three hundred fifty-one and twenty hundredths (351.20) feet, to a point; thence South no degrees forty-two minutes forty seconds West (S. 00° 42′ 40″ W.) forty-nine and one tenth (49.1) feet, to a point; thence southerly by a curve to the left having a radius of two thousand eight hundred fourteen and ninety-three hundredths (2814.93) feet and being concentric with said center line, six hundred forty-four and eight tenths (644.8) feet, to a point; thence South thirteen degrees twenty-two minutes East (S. 13° 22′ E.) ninety-nine and one tenth (99.1) feet, to a point; thence South thirteen degrees forty-one minutes East (S. 13° 41′ E.) ninety-one and seven tenths (91.7) feet, more or less, to a point in the aforesaid division line between lands now or formerly of The Board of Education of the Borough of Ringwood and lands now or formerly of Henry H. Brown; thence South five degrees twenty-six minutes West (S. 05° 26′ W.) along said division line, ten and three tenths (10.3) feet, more or less, to the point or place of beginning, containing forty-one and eighty-nine hundredths (41.89) acres, more or less, being part of premises conveyed and described as "Parcel Number One" in that certain deed from the North Jersey District Water Supply Commission to The New York and Greenwood Lake Rail-

way Company, dated September 14, 1934, and recorded in Volume H-38 at Page 168 of Passaic County Deed Records.

Parcel No. 5

Beginning at the point where the westerly line of lands known as right of way of the former Ringwood Branch of The New York and Greenwood Lake Railway Company, as relocated, is intersected by the northerly line of lands sold by the Granters herein to Ringwood Company by deed dated December 13, 1933 (and being also the termination point of the most northerly course of Parcel No. 4, hereinbefore described), and running: thence northwesterly by a curve to the right having a radius of one thousand sixty-one and eighty-seven hundredths (1061.87) feet and being concentric with the center line of the said Ringwood Branch, as relocated, five hundred twenty-nine and five hundredths (529.05) feet, to a point; thence North no degrees seven minutes twenty-five seconds East (N. 00° 07′ 25″ E.) parallel to said last mentioned center line, nine hundred seventy-six and seventy-one hundredths (976.71) feet to a point; thence North eighty-nine degrees fifty-two minutes thirty-five seconds West (N. 89° 52′ 35″ W.) fifteen (15) feet, to a point distant eighty (80) feet westerly, by rectangular measurement, from said center line; thence North no degrees seven minutes twenty-five seconds East (N. 00° 07′ 25″ E.) parallel with said center line, one thousand two hundred two and seventy-five hundredths (1202.75) feet, to a point in the easterly line of the former original right of way of said Ringwood Branch; thence northerly by a curve to the left having a radius of five thousand seven hundred sixty-two and sixty-five hundredths (5762.65) feet, along said last mentioned line, two hundred seventy-seven and six hundredths (277.06) feet, to a point; thence still along said last mentioned line North no degrees eleven minutes West (N. 00° 11′ W.) ninety-five and twenty-five hundredths (95.25) feet to a

point; thence South eighty-nine degrees fifty-two minutes and thirty-five seconds East (E. 89° 52′ 35″ E.) twenty-five and thirty-three hundredths (25.33) feet, to a point distant fifty (50) feet westerly, by rectangular measurement, from said center line; thence North no degrees seven minutes twenty-five seconds East (N. 00° 07′ 25″ E.) parallel with said center line, two hundred ten and sixty-nine hundredths (210.69) feet, to a point; thence northerly by a curve to the right having a radius of one thousand nine hundred sixty and eight hundredths (1960.08) feet and being concentric with said center line two hundred seventy-one and ten hundredths (271.10) feet, to a point in the easterly line of said original right of way of said Ringwood Branch; thence northeasterly, along said original right of way line by a curve to the right having a radius of eight hundred ninety-six and fifty-seven hundredths (896.57) feet three hundred eighty-three and seventy-six hundredths (383.76) feet, to a point; thence North forty-two degrees fifty-four minutes East (N. 42° 54′ E.) still along said original right of way line, eighteen and sixty-three hundredths (18.63) feet to a point distant seventy feet easterly, by rectangular measurement from said center line; thence South nineteen degrees nineteen minutes five seconds West (S. 19° 19′ 05″ W.) parallel with said center line, seven and forty-five hundredths (7.45) feet, to a point; thence South twenty-one degrees twenty-one minutes twenty-five seconds West (S. 21° 21′ 25″ W.) two hundred seventy-three and fifty-eight hundredths (273.58) feet, to a point, thence southerly by a curve to the left having a radius of seven hundred fifty-eight and thirty-six hundredths (758.36) feet and being tangent to the next preceding course, two hundred sixty-six and twenty-nine hundredths (266.29) feet, to a point; thence South one degree fourteen minutes fifteen seconds West (S. 01° 14′ 15″ W.) six hundred eleven and sixteen hun-

dredths (611.16) feet, to a point; thence South no degrees seven minutes twenty-five seconds West (S. 09° 07′ 25″ W.) one thousand one hundred sixty-eight and ninety-seven hundredths (1168.97) feet, to a point; thence South no degrees forty-four minutes thirty seconds East (S. 00° 44′ 30″ E.) five hundred seventy-nine and fifty-two hundredths (579.52) feet, to a point, thence southeasterly by a curve to the left having a radius of nine hundred seventy-three and eighty-seven hundredths (973.87) feet and being tangent to the next preceding course, three hundred twenty-eight and forty-seven hundredths (328.47) feet, to a point; thence South twenty degrees four minutes East (S. 20° 04′ E.) one hundred eighty-four and ninety-nine hundredths (184.99) feet, to a point; thence South sixty-nine degrees fifty-six minutes West (S. 69° 56′ W.) ninety-seven and sixty-six hundredths (97.66) feet, to a point distant fifty (50) feet, by radial measurement, from said center line; thence southeasterly by a curve to the left having a radius of nine hundred forty-six and eighty-seven hundredths (946.87) feet and being concentric with said center line six hundred ninety-three and ninety-one hundredths (693.91) feet, to a point; thence South forty-four degrees one minute fifty seconds East (S. 44° 01′ 50″ E.) one hundred eighty-seven and eighty-two hundredths (187.82) feet to a point; thence South forty degrees fourteen minutes ten seconds West (S. 40° 14′ 10″ W.) twenty-eight and sixteen hundredths (28.16) feet, to a point in said northeasterly line of Parcel No. 4 hereinbefore described; thence North forty-nine degrees forty-five minutes fifty seconds West (N. 49° 45′ 50″ W.) along said northeasterly line, four hundred seventy-eight and seventy-three hundredths (478.73) feet, to the point or place of beginning, containing eight and seventy-seven hundredths (8.77) acres, more or less, being the same premises conveyed by and described as "Parcel Number Four" in that certain deed

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from the North Jersey District Water Supply Commission to The New York and Greenwood Lake Railway Company dated September 14, 1934, and recorded in Volume H-38 at page 168 of Passaic County Deed Records.

Parcel No. 6

Beginning at the point of intersection of those two certain courses of Parcel No. 5 hereinbefore described, reading respectively "North no degrees eleven minutes West (N. 00° 11′ W.) ninety-five and twenty-five hundredths (95.25) feet" and "South eighty-nine degrees, fifty-two minutes, thirty-five seconds East (S. 89° 52′ 35″ E.) twenty-five and thirty-three hundredths (25.33) feet"; thence South no degrees eleven minutes East (S. 00° 11′ E.), along the westerly line of said Parcel No. 5, ninety-five and twenty-five hundredths (95.25) feet to a point of curve; thence southerly, on a curve to the right having a radius of five thousand seven hundred sixty-two and sixty-five hundredths (5762.65) feet, still along said westerly line of said Parcel No. 5, two hundred seventy-seven and six hundredths (277.06) feet to a point; thence North no degrees seven minutes twenty-five seconds East (N. 00° 07′ 25″ E.), parallel to and eighty (80) feet westerly of the center line of lands known as the right of way of the former Ringwood Branch of The New York and Greenwood Lake Railway, as relocated, three hundred seventy-two and twenty-five hundredths (372.25) feet to a point; thence South eighty-nine degrees fifty-two minutes thirty-five seconds East (S. 89° 52′ 35″ E.) four and sixty-seven hundredths (4.67) feet to the point of beginning, containing four hundredths (0.04) acres, more or less; being part of the premises conveyed to The New York and Greenwood Lake Railway Company by Abram S. Hewitt et ux. by a certain agreement dated June 2, 1896, and recorded in Volume K-12 at Page 181 of Passaic County Deed Records.

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Parcel No. 7

Beginning at the point where the most northerly course of Parcel No. 5 hereinbefore described intersects the easterly line of lands known as the relocated right of way of the former Ringwood Branch of The New York and Greenwood Lake Railway Company; thence South forty-two degrees fifty-four minutes West (S. 42° 54′ W.) along the northerly line of said Parcel No. 5, a distance of eighteen and sixty-three hundredths (18.63) feet to a point of curve; thence southerly, along the northwesterly line of said Parcel No. 5 on a curve to the left having a radias of eight hundred ninety-six and fifty-seven hundredths (986.57) feet, a distance of three hundred eighty-three and seventy-six hundredths (383.76) feet to a point in the westerly line of lands known as the relocated right of way of said Branch; thence northerly, along said last mentioned line, distant fifty (50) feet westerly, by radial measurement from the center line of said Branch, as relocated, and on a curve to the right having a radius of one thousand nine hundred sixty and eight hundredths (1960.08) feet, a distance of one hundred twenty-eight and ninety-six hundredths (128.96) feet; thence North seventy-eight degrees ten minutes fifty-five seconds West (N. 78° 10′ 55″ W.) twenty (20) feet to a point distant seventy (70) feet westerly, by radial measurement, from said center line; thence northerly, concentric with said center line and on a curve to the right having a radius of one thousand nine hundred eighty and eight hundredths (1980.08) feet, a distance of seventy-one and seventy-three hundredths (71.73) feet to a point in the westerly line of said former original right of way line of said Branch; thence northeasterly, along said last mentioned line and on a curve to the right having a radius of nine hundred sixty-two and fifty-seven hundredths (962.57) feet, a distance of two hundred thirteen and ninety-seven hundredths (213.97) feet to a point

of tangency; thence North forty-two degrees fifty-four minutes East (N. 42° 54′ E.) still along the westerly line aforesaid, one hundred sixty-nine and eighty-three hundredths (169.83) feet to a point in the easterly line of lands known as the relocated right of way of said Branch, said point being also the point of beginning of Parcel No. 8 hereinafter described; thence South nineteen degrees nineteen minutes five seconds West (S. 19° 19′ 05″ W.) along said last mentioned line, one hundred sixty-four and ninety-eight hundredths (164.98) feet, to the point or place of beginning; containing ninety-eight hundredths (.98) of an acre, more or less, being part of the premises conveyed to The New York and Greenwood Lake Railway Company by Abram S. Hewitt et ux., by a certain agreement dated June 2, 1896, and recorded in Volume K-12 at Page 181 of Passaic County Deed Records.

Parcel No. 8

Beginning in the westerly line of lands known as the original right of way of the former Ringwood Branch of The New York and Greenwood Lake Railway at a point seventy (70) feet easterly, by rectangular measurement, from the center line of said Ringwood Branch, as relocated, and also distant one hundred sixty-four and ninety-eight hundredths (164.98) feet, as measured North nineteen degrees nineteen minutes five seconds East (N. 19° 19′ 05″ E.) from the most northerly point of Parcel No. 5 hereinbefore described, and running; thence South forty-two degrees fifty-four minutes West (S. 42° 54′ W.) along said former original right of way line, and along the northwesterly line of Parcel No. 7 hereinbefore described, one hundred sixty-nine and eighty-three hundredths (169.83) feet, to a point; thence still along said last mentioned line by a curve to the left having a radius of nine hundred sixty-two and fifty-seven hundredths (962.57) feet two

hundred thirteen and ninety-seven hundredths (213.97) feet, to a point distant seventy (70) feet westerly, by radial measurement, from said center line; thence northerly by a curve to the right having a radius of one thousand nine hundred eighty and eight hundredths (1980.08) feet and being concentric with said center line, one hundred eighty-seven and forty-six hundredths (187.46) feet, to a point; thence North nineteen degrees nineteen minutes five seconds East (N. 19° 19′ 05″ E.) parallel with said center line, one thousand six hundred ninety-six and thirty hundredths (1696.30) feet, to a point; thence North seventy degrees forty minutes fifty-five seconds West (N. 70° 40′ 55″ W.) eighteen and twenty-two hundredths (18.22) feet, to a point distant eighty-eight and twenty-two hundredths (88.22) feet, westerly by rectangular measurement, from said center line; thence North nineteen degrees nineteen minutes five seconds East (N. 19° 19′ 05″ E.) parallel with said center line, six hundred sixty-three and sixty-eight hundredths (663.68) feet, to a point distant fifty (50) feet westerly, by radial measurement, from the relocated center line of what is known as the former Peters Mine Spur of said Railway; thence northerly by a curve to the left having a radius of seven hundred sixty-nine and two hundredths (769.02) feet and being concentric with said Spur center line, four hundred seventy-three and fourteen hundredths (473.14) feet, to a point; thence North thirteen degrees forty-three minutes twenty-five seconds West (N. 13° 43′ 25″ W.) one hundred eighty and ninety-one hundredths (180.91) feet, to a point in the original westerly right of way line of said Spur; thence South twenty-one degrees forty minutes East (S. 21° 40′ E.) along said last mentioned line, two hundred eighty and four-tenths (280.4) feet, to a point; thence still along said line by a curve to the right having a radius of five hundred forty-eight and sixty-nine hundredths (548.69) feet, two hundred twenty-

four and one-tenth (224.1) feet, to a point; thence South one degree forty-four minutes West (S. 01° 44′ W.) still along said line, four hundred twenty-six and two hundredths (426.02) feet, to a point distant fifty (50) feet easterly, by rectangular measurement, from said relocated center line of said former Ringwood Branch; thence South nineteen degrees nineteen minutes five seconds West (S. 19° 19′ 05″ W.) parallel with said center line, three hundred thirty and ninety-five hundredths (330.95) feet, to a point; thence South seventy degrees forty minutes fifty-five seconds East (S. 70° 40′ 55″ E.) twenty (20) feet, to a point distant seventy (70) feet easterly, by rectangular measurement, from said center line; thence South nineteen degrees nineteen minutes five seconds West (S. 19° 19′ 05″ W.) parallel with said center line, one thousand six hundred twenty-three and eighty-seven hundredths (1623.87) feet, to the point or place of beginning, containing seven and nine hundred seven thousandths (7.907) acres, more or less; being the same premises conveyed by and described as Parcel Number Five in that certain deed from the North Jersey District Water Supply Commission to The New York and Greenwood Lake Railway Company, dated September 14, 1934, and recorded in Volume H-38 at Page 168 of Passaic County Deed Records.

Parcel No. 9

Beginning at a point in the easterly line of lands known as the original right of way of the former Peters Mine Spur of The New York and Greenwood Lake Railway Company, distant twenty-five (25) feet easterly, by rectangular measurement, from the former original center line of said Spur at Station 1940+32; thence South twenty-nine degrees thirty-six minutes thirty-five seconds East (S. 29° 36′ 35″ E.) along the easterly line of the former right of way of said Spur, as relocated, one hundred eighty and

ninety-one hundredths (180.91) feet; thence southerly, still along said last mentioned line and on a curve to the right having a radius of eight hundred sixty-nine and two hundredths (869.02) feet, a distance of three hundred forty-nine and thirty-seven hundredths (349.37) feet, more or less, to a point of curve in the easterly line of said original right of way of said Spur; thence northerly, along the said last mentioned line and on a curve to the left having a radius of five hundred ninety-eight and sixty-nine hundredths (598.69) feet, a distance of two hundred forty-four and five tenths (244.5) feet to a point of tangency; thence North twenty-one degrees forty minutes West (N. 21° 40' W.) still along said last mentioned line, two hundred eighty and four-tenths (280.4) feet to the point or place of beginning containing fifteen hundredths (0.15) acres, more or less; being part of premises conveyed by and described as Parcel Number Six in that certain deed from the North Jersey District Water Supply Commission to The New York and Greenwood Lake Railway Company, dated September 14, 1934, and recorded in Volume H-38 at page 168 of Passaic County Deed Records.

THE foregoing parcels 1 to 9, inclusive, being the same premises conveyed to Defense Plant Corporation by deed from Harry V. Osborne, Receiver for the New York and Greenwood Lake Railway Company, et al, dated July 15, 1943 and recorded September 14, 1943 in Deed Book U-43 for Passaic County page 102.

SIXTH TRACT

ANY and all right, title and interest of the party of the first part in and to the tracks as, and insofar as, may now exist, and in the rights of way described in, and land now or formerly of Ringwood Company by agreements dated April 15, 1912 and January 22, 1914 between Erie Railroad Company (as lessee of the railroad and property of

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The New York and Greenwood Lake Railway Company) and the Ringwood Company, and in and to all and singular the property, including tracks and appurtenances and right of way therefor, constituting the so-called Peters Mine Spur and Cannon Mine Spur situated in the Borough of Ringwood, County of Passaic and State of New Jersey, constructed pursuant to said agreements as, and insofar as, they now exist, said tracks being therein specified as follows:

Agreement Dated April 15, 1912

"(a) A main side tract about eleven thousand and seventy-four (11074) feet in length, the center line of which said side track is described as follows:

Beginning at a point in the center line of the Ringwood Branch of The New York and Greenwood Lake Railway, which point is about three thousand eight hundred (3800) feet southerly measured along said center line from the southerly end of the Ringwood Station, said point being the point of switch of a number ten (10) turnout; thence northerly with curves of a number ten (10) turnout to the left two hundred twenty six (226.0) feet to a point twenty three (23.0) feet from the center line of said track, said point being station sixty eight plus three and six tenths (68 + 03.6) on the center line of the proposed side track; thence along a tangent north twenty seven degrees forty one minutes (27° 41') East, four hundred forty four and one tenth (444.1) feet, to a point of curve; thence along a curve to the left with a radius of nine hundred fifty five and thirty seven one hundredths (955.37) feet, a distance of two hundred twenty four and one tenth (224.1) feet to a point of tangent; thence North fourteen degrees fourteen minutes (14° 14') East, four hundred and seventy seven and seven tenths (477.7) feet to a point of curve;

thence along a curve to the left with a radius of five hundred seventy three and sixty nine one hundredths (573.69) feet, a distance of two hundred twenty nine and seven tenths (229.7) feet; thence North eight degrees forty four minutes (8° 44′) West, three hundred two and eight tenths (302.8) feet to a point of curve; thence along a curve to the right with a radius of five hundred seventy three and sixty nine hundredths (573.69) feet, a distance of four hundred twenty eight (428.0) feet; thence North thirty four degrees four minutes (34° 04′) East, eleven hundred eighty three and four tenths (1183.4) feet, to a point of curve; thence along a curve to the left with a radius of five hundred seventy three and sixty nine one hundredths (573.69) feet, a distance of four hundred twenty seven and five tenths (427.5) feet; thence North eight degrees forty one minutes (8° 41′) West, five hundred sixty five and seven tenths (565.7) feet, to a point of curve; thence along a curve to the left with a radius of five hundred seventy three and sixty nine one hundredths (573.69) feet, a distance of three hundred two and eight tenths (302.8) feet; thence North thirty eight degrees fifty-eight minutes (38° 58′) West, two hundred thirty and six tenths (230.6) feet to a point of curve; thence along a curve to the right with a radius of five hundred seventy three and sixty nine one hundredths (573.69) feet, a distance of five hundred forty (540.0) feet; thence North fifteen degrees two minutes (15° 02′) East, eight hundred fifty five and eight tenths (855.8) feet to a point of curve; thence along a curve to the left with a radius of fifty seven hundred twenty nine and sixty five one hundredths (5729.65) feet, a distance of one hundred eighty three and three tenths (183.3) feet; thence North thirteen degrees twelve minutes (13° 12′) East, nine hundred forty nine and four tenths (949.4) feet, to a point of curve; thence along a curve to the right with a radius of nine hundred fifty five and thirty seven one

hundredths (955.37) feet, a distance of three hundred fifty one and three tenths (351.3) feet; thence North thirty four degrees seventeen minutes (34° 17′) East, ten hundred thirty and eight tenths (1030.8) feet, to a point of curve; thence along a curve to the left with a radius of eleven hundred forty six and twenty eight hundredths (1146.28) feet, a distance of seven hundred seventy (770.0) feet, to a point of compound curve; thence with a curve to the left with a radius of nine hundred twenty seven and nine tenths (927.9) feet, a distance of five-hundred seven (507.0) feet, to a point of reverse curve; thence along a curve to the right with a radius of five hundred fifty eight (558.0) feet, a distance of three hundred ninety (390.0) feet; thence North four degrees thirty one minutes (4° 31′) East, five hundred ten (510.0) feet, to station one hundred seventy seven (177) of said center line—all in substantially the location and position as shown upon the plan endorsed "Erie R.R. Co. Greenwood Lake Division, Ringwood Branch. Location of spur to Peters Mine, Ringwood Co., Town of Pompton, Passaic County, New Jersey. Scale of map 1″—200′. Jan. 15, 1912. Office of Assistant Engineer."

"(b) A branch side track about ten hundred seventy seven (1077) feet in length extending northeasterly from a point of connection with said main side track at Station one hundred fifty five plus twenty three (155 plus 23) thereof in substantially the location and position shown by the red line between the points "A" and "C" upon the blueprint which is hereto attached and made a part hereof.

"(c) A branch side track about seven hundred twenty five (725) feet in length extending northeasterly from a point of connection with said main side track at Station one hundred sixty nine plus seveny five (169 plus 75) thereof in substantially the location and position shown by the red line between the points "D" and "E" upon

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the said blueprint which is hereto attached and made a part hereof.

"(d) A coal side track about five hundred ninety (590) feet in length extending north easterly from a point of connection with the branch side track at a point known as Station one hundred sixty four (164) and in substantially the location and position shown by the red line between the points "B" and "F" upon the said blueprint which is hereto attached and made a part hereof. It being understood that a portion of said coal side track is to be located upon a trestle and that said trestle shall be constructed by the Railroad Company in connection with the construction of said coal side track."

Agreement dated January 22, 1914

"(a) A main side track about two thousand five hundred and fifty-one (2551) feet in length the center line of which track is described as follows:

"Beginning at a point (designated by the letter "A" on the blueprint plan hereto attached) on the center line of the spur to Peters Mine of the Ringwood Branch of The New York and Greenwood Lake Railroad (said spur being the main side track described in the said agreement of April 15, 1912), said point being a distance of about 1785 feet southerly from the southerly switch of the main side track at Peters Mine, the beginning being the point of switch of a No. 10 turnout; thence in a southerly direction with a No. 10 turnout a distance of 263 feet to a point 13 feet distant at right angles from the spur to Peters Mine; thence south 13° 12' west 76 feet; thence in a southwesterly direction with a curve to the right, whose radius is 819 feet a distance of 344.05 feet; thence south 37° 17' west 840.46 feet; thence on a southwesterly direction with a curve to the right whose radius is 819 feet a distance of 164.3 feet; thence south 48° 47' west 72.7 feet; thence in

a southerly direction with a curve to the left, whose radius is 1042.1 feet a distance of 720 feet; thence south 9° 11' west 130 feet to the end, making a total length of about 2551 feet.

"(b) A branch side track 850 feet long beginning at a point about 1274 feet from the point (designated as "A" on the annexed blueprint plan) the beginning of the track described above and located parallel and to the south of it at a distance of 13 feet from center line to center line, the westerly switch of same being about 427 feet from the end of spur track above described, in substantially the location and position shown between the points "B" and "C" upon the blueprint plan hereto attached (which plan is made a part hereof) endorsed 'Erie R.R. Co. Greenwood Lake Division, Ringwood Branch, Location of Tracks for Spur to Cannon Mine, Ringwood Co. Town of Pompton, Passaic Co., N. J. Scale of Map 1"—200', Office of Assistant Engineer, Jan. 14, 1914'."

The foregoing property being the same as conveyed to Defense Plant Corporation by deed dated July 15, 1943 by and from Erie Railroad Company, Harry V. Osborne, Receiver for The New York and Greenwood Lake Railway Company, and The New York and Greenwood Lake Railway Company, recorded in the Office of the Register of Deeds, County of Passaic, on September 14, 1943 in Book V-43 of Deeds at page 96.

Also meaning and intending to convey those premises conveyed by Reconstruction Finance Corporation to the United States of America by Deed dated February 13, 1950, recorded on April 14, 1950 in the Passaic County Register's Office in Book K-53 of Deeds at page 14.

Together With all right, title and interest of the party of the first part in and to an assignment from the Ringwood Company to Defense Plant Corporation dated De-

cember 1, 1942 and recorded in the Passaic County Register's Office on December 10, 1942 in Book K-43 of Deeds at page 162, of the interest of the said Ringwood Company in a water supply agreement dated May 17, 1926 between North Jersey District Water Supply Commission and Ringwood Company, and in a water agreement dated November 30, 1926 between the North Jersey District Water Supply Commission, Sarah C. Hewitt and Ringwood Company.

TOGETHER also with all the right, title and interest of the party of the first part in and to the strips and gores of land or land under water, adjacent or adjoining said premises, and land lying in the bed of any street, road, avenue, land or right of way as they now exist or formerly existed, included in, in front of or adjoining the premises.

TOGETHER also with all the right, title and interest of the party of the first part in, to and under a certain agreement dated June 12, 1943 between The Board of Chosen Freeholders of the County of Passaic, The Borough of Ringwood, The New York and Greenwood Lake Railway Company, Harry V. Osborne and William Wyer, Receivers, Erie Railroad Company and Defense Plant Corporation, relating to the acquisition by Defense Plant Corporation of Bridge No. 32.94 on Ringwood Lake Road, north of Wanaque Borough.

TOGETHER also with all easements and riparian rights of the party of the first part in and to said premises.

TOGETHER also with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversions, remainder and remainders, rents, issues and profits thereof, and also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity,

of the said party of the first part, of, in and to the above described premises and every part and parcel thereof.

TOGETHER also with and subject to all the right, title, interest, obligations and duties of the party of the first part in, to and under a certain agreement dated July 27, 1943 between the New Jersey District Water Supply Commission and Defense Plant Corporation, relating to the right to lay, maintain, repair, replace and use an 8-inch pipeline from the pump station near Ringwood River to the lands described above.

TOGETHER with any right of the party of the first part to operate any railroad conveyed herein.

Schedule C, Annexed to Complaint

SCHEDULE OF TAXES NOW DUE AND UNPAID TO THE BOROUGH OF RINGWOOD

Block No.	*Year*	*Amount of tax*	*Penalty*	*Total*
115-1	1953	$16,830.38	$4,051.00	$20,881.38
115-2	"	691.20	134.78	825.98
116A-1B	"	172.80	23.69	196.49
116B-1B	"	394.20	73.86	468.06
17D-8, 18A-2	"	372.60	69.65	442.25
		$18,461.18	$4,352.98	$22,814.16
115-1	1954	$22,918.83	$2,809.69	$25,728.52
115-2	"	764.16	83.61	847.77
116A-1B	"	191.04	23.40	214.44
116B-1B	"	435.81	53.38	489.19
17D-8, 18A-2	"	411.93	50.47	462.40
		$24,721.77	$3,020.55	$27,742.32
115-1	1955	$22,918.83		
115-2	"	764.16		
116A-1B	"	191.04		
116B-1B	"	435.81		
17D-8, 18A-2	"	411.93		
		$24,721.77		

Answer of Defendant, Borough of Ringwood

The defendant, Borough of Ringwood, a municipal corporation of the State of New Jersey, with its municipal building in the Borough of Ringwood, Passaic County, New Jersey, by Wallisch & Wallisch, Esqs., Louis Wallisch Jr., of the firm answering the complaint of the plaintiff says that:

1. For answer to paragraph 1 of the complaint filed herein, defendant admits the allegation contained therein.

2. For answer to paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, defendant is without knowledge or information sufficient to form a belief as to the truth of the averments thereof and therefor demands strict proof thereof.

3. For answer to paragraph 12 of the complaint filed herein, defendant admits that the defendant, Ringwood Iron Mines, Inc. has failed to pay real estate taxes due and owing to the Borough of Ringwood. The schedule of taxes due and owing attached to the complaint correctly recites the periods for which they are due and owing, but the figures contained therein are not correct. The defendant denies that portion of this paragraph which alleges that the claim on the part of the Borough of Ringwood for taxes due is subordinate to the lien of the United States advanced in the complaint.

4. For answer to paragraphs 13, 14, 15, 16, 17 and 18 of the complaint filed herein, the defendant is without knowledge or information sufficient to form a belief as to the truth of the averments thereof and therefor demands strict proof thereof.

5. For the answer to the prayers contained in the complaint filed herein, defendant, Borough of Ringwood, con-

tends that the United States of America is not entitled to any judgment in any respect against it, the said Borough of Ringwood.

6. The defendant, Borough of Ringwood, denies each and every other allegation contained in the complaint.

First Defense

The complaint fails to state a claim against the defendant, Borough of Ringwood, upon which relief can be granted.

Second Defense

The lien of the United States of America in and to the property described in the complaint and by virtue of the mortgage referred to is subordinate to the lien of the Borough of Ringwood for taxes due and owing.

Third Defense

The property referred to in the complaint and described in the mortgage is subject to taxation in accordance with the laws of the State of New Jersey, and accordingly is not exempt by virtue of said laws from taxation.

Fourth Defense

If there be a judgment decreeing that the same lands described in the complaint be sold, it shall provide that said lands be sold subject to the lien of the Borough of Ringwood for taxes due and owing.

Wallisch & Wallisch
Attorneys for Defendant,
Borough of Ringwood,
By: Louis Wallisch Jr.
Of the Firm.

Judgment of Foreclosure

On application of the plaintiff, United States of America, and it appearing that the default of the defendant, Ringwood Iron Mines, Inc., has been entered and that the consent of Wallisch & Wallisch, attorneys for the Borough of Ringwood, and Grover C. Richman, Jr., Attorney General for the State of New Jersey, has been affixed hereto and that the Bond and Mortgage referred to in the complaint filed herein have been presented and marked as exhibits by the Court;

And it appearing from the affidavit filed herewith that there is due to the plaintiff for principal and interest on the mortgage described in the complaint, together with costs of court, filing fees for Lis Pendens and other costs suffered by the United States, as enumerated in the affidavit, the sum of $1,659,139.04.

And it further appearing that it is understood between the United States of America on the one hand and the Borough of Ringwood on the other that should it be determined by the Court pursuant to the trial of the question that under applicable law the tax claim of the Borough of Ringwood is not cut off by the foreclosure sale to be held pursuant to this proceeding and that said taxes are due and owing and are superior to the claim of the United States of America, such taxes shall then remain a lien against the property and shall be payable by the owner thereof.

It is, therefore, on this 2nd day of July, 1956, ORDERED, ADJUDGED and DECREED that the plaintiff is entitled to have the sum of $1,659,139.04, together with lawful interest thereon from the date of this judgment and costs of this suit to be raised and paid out of the sale of the subject premises. And it is further

ORDERED that so much of the mortgaged premises as will be sufficient to raise and satisfy said mortgage, interest

and costs be sold and that an execution do issue for that purpose out of this Court directed to the United States Marshal for the District of New Jersey, demanding him to make sale according to law of so much of the mortgaged premises as will be sufficient to satisfy the said mortgage, interest and costs, and that subject to the determination of the priority of the tax claim of the Borough of Ringwood, he pay, in the first place, to the plaintiff the aforesaid sum of $1,659,139.04 with interest and costs, and that in case there is a surplus over and above said payment, same shall be brought into this Court and deposited with the Clerk of this Court subject to the further order of the Court; and that said Marshal make his report to this Court of the sale as required by the laws of this Court. And it is further

ORDERED that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to so much of the said mortgaged premises as shall be sold as aforesaid under this judgment, except as is stated above in the agreement between the United States and the Borough of Ringwood set forth in the third paragraph herein.

United States District Judge

We hereby consent to the entry of the within Judgment as to form.

WALLISCH & WALLISCH,
Attorneys for Defendant,
Borough of Ringwood,
By LOUIS WALLISCH, JR.,
Of the Firm.

GROVER C. RICHMAN, JR.,
Attorney General of New Jersey,
By ROBERT E. FREDERICK,
Deputy Attorney General.

(Exhibits annexed to this Judgment are omitted as unnecessary to the issues of this appeal.)

Plaintiff's Notice of Motion for Order Granting Priority to Plaintiff's Lien

To: Wallisch & Wallisch, Esquires
181 Prospect Street
Passaic, New Jersey

Please take notice that on January 14, 1957 at the United States Court House, Federal Building, Newark, New Jersey before the Honorable Alfred E. Modarelli, Judge of the United States District Court for the District of New Jersey at 10:00 o'clock in the forenoon or as soon thereafter as counsel may be heard, the undersigned will make application for an order granting priority to the mortgage lien of the United States and cutting off the subsequent municipal tax lien of the Borough of Ringwood on the subject premises.

At the hearing of this motion the undersigned will rely on the grounds set forth in the attached Memorandum of Law.

Chester A. Weidenburner,
United States Attorney,
By Eugene M Friedman,
Assistant United States Attorney.

Exhibit (Purchase Money Mortgage), Submitted to Court on Consent

Purchase Money Mortgage

This indenture, made this 14 day of August, 1951, between Ringwood Iron Mines, Inc., a corporation organized and existing under and by virtue of the laws of the State of New Jersey, and having a place of business at Ringwood, County of Passaic, State of New Jersey, party of the first part, and the Administrator of General Services, acting

Exhibit (Purchase Money Mortgage), Submitted to Court on Consent

for and on behalf of the UNITED STATES OF AMERICA, under and pursuant to the powers and authority contained in the provisions of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377) and regulations and orders promulgated thereunder, party of the second part;

WHEREAS, the said Ringwood Iron Mines, Inc., is justly indebted to the said party of the second part in the sum of ONE MILLION FOUR HUNDRED THOUSAND AND 00/100 DOLLARS ($1,400,000.00), lawful money of the United States, secured to be paid by its certain Note or obligation, bearing even date with these presents, in the sum of ONE MILLION FOUR HUNDRED THOUSAND AND 00/100 DOLLARS ($1,400,000.00), lawful money as aforesaid, to the said party of the second part, its successors or assigns, with interest thereon, to be computed from the 14th day of August, 1951, at and after the rate of four per cent (4%) per annum, to be paid as provided in said Note.

Principal payments in addition to the installments required by said Note, or the entire unpaid balance of principal due thereon, may be prepaid at any time, without premium or penalty, upon thirty (30) days notice in writing to the holder thereof. Such additional principal payments shall not defer the due date nor reduce the amount of any installment required to be paid thereunder.

THIS MORTGAGE is a purchase money mortgage securing the payment of part of the purchase price on a conveyance from the party of the second part to the party of the first part, bearing even date herewith, and delivered and intended to be recorded simultaneously herewith.

AND IT IS HEREBY EXPRESSLY AGREED that should any default be made in the payment of the said interest or installment of principal or of any part thereof, on any day

Exhibit (Purchase Money Mortgage), Submitted to Court on Consent

whereon the same is made payable, as above expressed, or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in this Mortgage, and become due and payable, and should the said interest or installment of principal or any part thereof remain unpaid and in arrears for the space of thirty (30) days after notice from the party of the second part to the party of the first part of such default, or should said tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrears for the space of sixty (60) days after notice from the party of the second part to remedy the default, unless the party of the first part shall notify the party of the second part that it desires to challenge the validity of such tax, assessment or charge, and shall deposit in escrow with the party of the second part, a sum sufficient to cover payment of the said taxes, together with interest and penalties computed to a date nine months from the due date thereof, which sum may be paid by the party of the second part at its option to the taxing authority involved at the expiration of said nine month period irrespective of the status of the tax dispute between the party of the first part and the said taxing authority, then and from thence forth, that is to say, after the lapse or expiration of either of the said periods as the case may be, then aforesaid principal sum of ONE MILLION FOUR HUNDRED THOUSAND AND 00/100 DOLLARS ($1,400,000.00), or any then unpaid balance thereof, with all arrearages of interest thereon, shall, at the option of the said party of the second part, its successors or assigns, become and be due and payable immediately thereafter although the period limited for the payment thereof as mentioned in the aforesaid Note may not then have expired, anything

Exhibit (Purchase Money Mortgage), Submitted to Court on Consent

thereinbefore contained to the contrary thereof in anywise notwithstanding; and the said party of the second part may at its option, pay such tax, assessment or water rent in arrears, and the amount so paid shall be added to and become part of the principal sum secured by the said Note and this Mortgage, and shall be payable on demand with interest at six per cent (6%) per annum, as by the said Note or obligation, and the conditions thereof, reference being thereunto had, may more fully appear.

NOW THIS INDENTURE WITNESSETH, that the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said Note or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of One Dollar ($1.00), to it in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, release, convey and confirm unto the said party of the second part, and to its successors and assigns forever, all its right, title and interest in and to the following described real property situated in the Borough of Ringwood, in the County of Passaic and State of New Jersey, to wit:

All those certain tracts, pieces or parcels of land, together with the buildings and improvements thereon erected, situate, lying and being in the Borough of Ringwood, in the County of Passaic and State of New Jersey, bounded and described as follows:

"Beginning at a point (designated by the letter "A" on the blueprint plan hereto attached) on the center line of the spur to Peters Mine of the Ringwood Branch of The New York and Greenwood Lake Railroad (said spur be-

Exhibit (Purchase Money Mortgage), Submitted to Court on Consent

ing the main side track described in the said agreement of April 15, 1912), said point being a distance of about 1785 feet southerly from the southerly switch of the main side track at Peters Mine, the beginning being the point of switch of a No. 10 turnout; thence in a southerly direction with a No. 10 turnout a distance of 203 feet to a point 13 feet distant at right angles from the spur to Peters Mine; thence south 13° 12′ west 76 feet; thence in a southwesterly direction with a curve to the right, whose radius is 819 feet a distance of 344.95 feet; thence south 37° 17′ west 840.46 feet; thence on a southwesterly direction with a curve to the right whose radius is 819 feet a distance of 164.3 feet; thence south 48° 47′ west 72.7 feet; thence in a southerly direction with a curve to the left, whose radius is 1042.1 feet a distance of 720 feet; thence south 9° 11′ west 130 feet to the end, making a total length of about 2551 feet.

"(b) A branch side track 850 feet long beginning at a point about 1274 feet from the point (designated as "A" on the annexed blueprint plan) the beginning of the track described above and located parallel and to the south of it at a distance of 13 feet from center line to center line, the westerly switch of same being about 427 feet from the end of spur track above described, in substantially the location and position shown between the points "B" and "C" upon the blueprint plan hereto attached (which plan is made a part hereof) endorsed 'Erie R.R. Co. Greenwood Lake Division, Ringwood Branch, Location of Tracks for Spur to Cannon Mine, Ringwood Co., Town of Pompton, Passaic Co., N. J., Scale of Map 1"—200', Office of Assistant Engineer, Jan. 14, 1914'."

The foregoing property being the same as conveyed to Defense Plant Corporation by deed dated July 15, 1943 by and from Erie Railroad Company, Harry V. Osborne, Re-

Exhibit (Purchase Money Mortgage), Submitted to Court on Consent

ceiver for The New York and Greenwood Lake Railway Company, and The New York and Greenwood Lake Railway Company, recorded in the Office of the Register of Deeds, County of Passaic, on September 14, 1943 in Book V-43 of Deeds at page 96.

Also meaning and intending to convey those premises conveyed by Reconstruction Finance Corporation to the United States of America by Deed dated February 13, 1950, recorded on April 14, 1950 in the Passaic County Register's Office in Book K-53 of Deeds at page 14.

TOGETHER WITH all right, title and interest of the party of the first part in and to an assignment from the Ringwood Company to Defense Plant Corperation dated December 1, 1942 and recorded in the Passaic County Register's Office on December 10, 1942 in Book K-43 of Deeds at page 162, of the interest of the said Ringwood Company in a water supply agreement dated May 17, 1926 between North Jersey District Water Supply Commission and Ringwood Company, and in a water agreement dated November 30, 1926 between the North Jersey District Water Supply Commission, Sarah C. Hewitt and Ringwood Company.

TOGETHER also with all the right, title and interest of the party of the first part in and to strips and gores of land or land under water, adjacent or adjoining said premises, and land lying in the bed of any street, road, avenue, land or right of way as they now exist or formerly existed, included in, in front of or adjoining the premises.

TOGETHER also with all the right, title and interest of the party of the first part in, to and under a certain agreement dated June 12, 1943 between The Board of Chosen Freeholders of the County of Passaic, the Borough of

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Ringwood, The New York and Greenwood Lake Railway Company, Harry V. Osborne and William Wyer, Receivers, Erie Railroad Company and Defense Plant Corporation, relating to the acquisition by Defense Plant Corporation of Bridge No. 32.94 on Ringwood Lake Road, north of Wanaque Borough.

TOGETHER also with all easements and riparian rights of the party of the first part in and to said premises.

TOGETHER also with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversions, remainder and remainders, rents, issues and profits thereof, and also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the above described premises and every part and parcel thereof.

TOGETHER also with and subject to all the right, title, interest, obligations and duties of the party of the first part in, to and under a certain agreement dated July 27, 1943 between the New Jersey District Water Supply Commission and Defense Plant Corporation, relating to the right to lay, maintain, repair, replace and use an 8-inch pipeline from the pump station near Ringwood River to the lands described above.

TOGETHER with any right of the party of the first part to operate any railroad conveyed herein.

TOGETHER WITH ALL building installations, fixtures, equipment, tangible personal property and appurtenances, and all interests in such property (including but not limited to all the items set forth in Schedule "A" annexed hereto and made a part hereof) now owned or which may hereafter be acquired by the party of the first part and

Exhibit (Purchase Money Mortgage), Submitted to Court on Consent

located in or on or used or intended to be used in connection with or with the operation of said lands, mines, and the buildings, plants and improvements now and hereafter erected thereon.

And it is Hereby Expressly Agreed notwithstanding anything herein to the contrary, that all additional equipment installed in or upon the premises and any additional structures erected thereon shall be covered by the lien of this mortgage, subject, however, to any chattel mortgages or conditional bills of sale executed by the party of the first part securing all or a part of the purchase price of such additional machinery, equipment or structures. The party of the first part agrees to retire and pay as promptly as possible all such purchase money chattel mortgages or conditional bills of sale for any such additional machinery, equipment or structures in conformity with sound business practice. Until full payment is made of the principal and interest secured by the aforesaid Note and this Purchase Money Mortgage, the party of the first part agrees to execute, upon demand by the party of the second part, such documents or instruments deemed necessary by the said party of the second part to extend the lien of this Purchase Money Mortgage to the interest of the party of the first part to any additional equipment, machinery or structures hereinafter installed, erected upon or used in connection with the premises.

To Have and to Hold the above granted and described premises, with the appurtenances, unto the said party of the second part, its successors or assigns, to its own proper use, benefit and behoof forever.

Provided Always, and these presents are upon this express condition, that if the said party of the first part, or

Exhibit (Purchase Money Mortgage), Submitted to Court on Consent

its successors or assigns, shall well and truly pay unto the said party of the second part, its successors or assigns, the said sum of money mentioned in the condition of said Note or obligation, and the interest thereon, at the time and times, and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine and be void.

And the said party of the first part for itself and its successors does covenant and agree to pay unto the said party of the second part, its successors or assigns, the said sum of money and interest, as mentioned above and expressed in the conditions of the said Note.

And it is also agreed by and between the parties to these presents, that the said party of the first part, its successors and assigns, shall and will keep the buildings erected, and to be erected, upon the lands above conveyed, insured against loss or damage by fire, in such manner and in such companies and for such amounts as may be satisfactory to the said party of the second part, its successors or assigns, until the debt hereby secured is fully paid; and to assign the policy or policies and certificates thereof to the said party of the second part as collateral security for the payment of the indebtedness hereby secured; and in default thereof, it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said Note or obligation, and secured by these presents, payable on demand, with interest at the rate of four per cent (4%) per annum, from the time of payment of such premium or premiums; and in default thereof for thirty (30) days after demand by the party of the second part, the principal sum

hereof, with all arrearages of interest thereon shall, at the option of the party of the second part, its successors or assigns, become and be due and payable immediately thereafter.

And should the party of the second part, its successors or assigns, by reason of any such insurance against loss by fire as aforesaid, receive any sum or sums of money for any damage by fire to the said building or buildings, machinery, equipment or other personal property, such amount shall be retained by the said party of the second part and deposited in escrow in a suspense account, and all or any portion thereof shall be made available to the party of the first part for the purpose of defraying the cost of repairing, replacing or rebuilding the property destroyed or damaged, provided, however, that the party of the first part shall submit to the party of the second part certified invoices, together with a certificate signed and verified by an officer of the party of the first part, setting out in reasonable details the amount so expended and the purpose to which it is applied.

And the said party of the first part, the owner of the lands above described for itself, its successors and assigns, does further covenant and agree to and with the said party of the second part, its successors and assigns, that it will keep said premises in good repair and will not suffer or permit any waste thereon, it will not claim any credit on, or make any deduction from the interest or principal hereby secured by reason of the payment of any taxes so levied, or to be levied, during the continuance of the lien of this Mortgage, and upon the breach of this covenant or any part thereof (other than for causes beyond the control of the party of the first part) during the continuance of the lien of this mortgage, unless the party of the first part

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shall, within sixty (60) days after the notice of the breach of this covenant, give satisfactory assurances that the breach will be remedied with reasonable diligence, the party of the second part may at its option declare this mortgage immediately due and payable.

And said party of the first part agrees that if default shall be made in any of the aforesaid covenants or conditions, and said default is not remedied within the time set forth above, the party of the second part, its successors and assigns, shall have the right forthwith, after any such default, to enter upon and take possession of the said mortgaged premises, and to let the said premises, and receive the rents, issues and profits thereof, and to apply the same, after payment of all necessary charges and expenses, on account of the amount hereby secured, and said rents and profits are, in the event of any such default, hereby assigned to the party of the second part, its successors and assigns, and the party of the second part, its successors and assigns, shall also be at liberty immediately after any such default, upon proceedings being commenced for the foreclosure of this Mortgage, to apply for the appointment of a receiver of the rents and profits of the said premises, and be entitled to the appointment of such receiver as a matter of right, as security for the amounts due the party of the second part, its successors and assigns, without consideration of the value of the mortgaged premises or solvency of any person or persons liable for the payment of such amounts.

And the said party of the first part does covenant with the party of the second part that it is seized of an indefeasible estate in fee simple in the said premises subject to certain easements, servitudes, rights in lanes, streets, roads, highways, streams, drains, ditches, water courses and rights

Exhibit (Purchase Money Mortgage), Submitted to Court on Consent

of way outstanding as of the date hereof and that it will warrant and forever defend the title unto the party of the second part, its successors and assigns, in the property numbered "First Tract" to "Fourth Tract", inclusive, and the "Sixth Tract", above described, subject to the said aforementioned outstanding easements, servitudes, rights and rights of way against all lawful claims whatsoever; that it will warrant and forever defend the title unto the party of the second part, its successors and assigns, in the "Fifth Tract" above described, against all lawful claims whatsoever provided the liability of the party of the second part with respect to this warranty under the said "Fifth Tract" is limited to the sum of $2500; that it will forever warrant and forever defend unto the party of the second part, its successors and assigns, all the property and all the appurtenances, agreements and easements conveyed by the party of the second part to the party of the first part by deed bearing even date herewith against the claims and demands of the party of the first part and all persons claiming or to claim by, through or under it.

And it is expressly agreed by and between the parties that in the event of any default hereunder and said default is not remedied within the time set forth above and the party of the first part or any subsequent owner is occupying any part of the premises, a reasonable rental for the part so occupied shall be paid by the occupant monthly in advance to the party of the second part or to a receiver appointed as herein provided; that if any action or proceeding be commenced (except an action to foreclose this mortgage or to collect the debt secured hereby), to which action or proceeding the holder of this mortgage is made a party, or in which it becomes necessary to defend or uphold the lien of this mortgage, all sums paid by the holder of this mortgage for the expense of any litigation to prosecute

or defend the rights and lien created hereby, including reasonable counsel fees, shall be paid by the party of the first part, together with interest at the rate of six percent (6%) per annum, and any such sum and the interest thereon shall become a lien on said premises, prior to any right or title to, interest in or claim upon said premises attaching or accruing subsequent to the lien of this mortgage and shall be deemed to be secured by this mortgage and by the Note which it secures. In any action or proceeding to foreclose this mortgage or to recover or collect the debt secured thereby, the provisions of law respecting the recovery of costs, disbursements and allowances shall prevail unaffected by this covenant.

And it is further agreed that the whole of the said principal sum herein shall become immediately due at the option of the party of the second part if the party of the first part shall assign the rents or any part of the rents of the mortgaged premises without first obtaining the prior written consent of the holder of this mortgage, unless such assignment is made subject to this Mortgage; that the whole of the said principal sum shall become immediately due and payable without further notice or demand at the option of the holder of this mortgage if default shall be made in any of the aforesaid covenants and conditions or the covenants, conditions and provisions of the Note which this mortgage secures, and said default is not remedied within the time hereinabove provided.

And the said party of the first part, within twenty (20) days, upon written request of the holder of this Mortgage will furnish a statement of the amount due on this Mortgage.

And the said party of the first part does hereby covenant and agree with the party of the second part that in the

event that any of the property covered by the lien of this mortgage is taken by the exercise of the power of eminent domain and the operations of the property covered by the mortgage will be impaired by such taking, then the proceeds of the award shall be applied first to making good the impairment, and the excess, if any, shall be applied to the reduction of the mortgage.

And the said party of the first part does hereby covenant and agree that so long as it is in default in the payment of any principal and interest due on the aforesaid Note, no dividends, distribution or bonuses shall be paid by the party of the first part, and no retirement of income debentures shall be made.

And the party of the first part does further covenant and agree with the party of the second part that in no case will it, until full payment is made of the principal and interest secured by the Note and this Purchase Money Mortgage, resell the property without the prior written authorization of the Administrator of General Services, or his successor in function.

And the said party of the first part does covenant and agree with the party of the second part, that so long as the party of the first part is not in default in any of the covenants and conditions of this Mortgage, the party of the first part may apply to the party of the second part for a release from this mortgage of any portion of the property, real or personal, or any interest therein, which is under the lien of this Mortgage, upon submission of proper evidence that because of substituted values, reduction of the mortgage or otherwise, the security of the mortgage will not be impaired by such release, and the party of the second part agrees that it will not unreasonably withhold its consent to such release. Except with the consent of the

Exhibit (Purchase Money Mortgage), Submitted to Court on Consent

party of the second part as hereinbefore specified, none of the real or personal property or fixtures covered by the lien of the mortgage will be sold or removed from the premises covered by such lien. The party of the first part will keep complete records of the acquisition and disposition of machinery, equipment and facilities, any interest in which is covered by this mortgage, and will make said records available at all reasonable times to the party of the second part.

Nothing herein contained shall be deemed to preclude the party of the first part from selling, removing or consuming the chemicals, ores, metals, concentrates, goods in process or any material, merchandise and supplies now owned or hereafter acquired for the purpose of sale in the ordinary course of business or for consumption in the operations of the party of the first part.

All the covenants and conditions hereinabove contained shall be for the benefit of and shall apply to and bind the said parties hereto and their respective successors and assigns.

In witness whereof, said party of the first part has caused these presents to be signed by its President, and its corporate seal to be hereto affixed and attested by its Secretary, the day and year first above written.

Ringwood Iron Mines, Inc.
By Lewis Sanders
President

(seal)

Attest:

Carl S. Stern
Secretary

Exhibit (Purchase Money Mortgage), Submitted to Court on Consent

See Book 75 Page 9 of Releases

See Inst. No. 571477 for Lis Pendens

Notice Filed 1/31/56 Bill Filed 1/23/56

United States of America Comflt.

Ringwood Iron Mines Inc. et al Defts.

See Book U-65 Page 12 of Deeds

State of New York, }
County of New York, } ss.:

Be it remembered, That on this 14th day of August, One Thousand Nine Hundred and Fifty-one, before me, the subscriber, a notary public of the State of New York authorized to take acknowledgements of mortgages (P.M.), personally appeared Carl S. Stern, who being by me duly sworn on his oath, says that he is the Secretary of Ringwood Iron Mines, Inc., the party of the first part named in the within instrument; that he well knows the corporate seal of said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that the said seal was so affixed and the said instrument signed and delivered by Lewis Sanders, who was at the date thereof the President of said corporation, in the presence of this deponent, and said President, at the same time acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, and as the voluntary act and deed of said corporation, and that deponent, at the same time

subscribed his name to said instrument as an attesting witness to the execution thereof.

CARL S. STERN
Carl S. Stern

Sworn and subscribed before me at
New York, N. Y. the date aforesaid.
PAUL F. CIRILLO
Paul F. Cirillo

(SEAL)

Opinion of Modarelli, *D.J.*, on Plaintiff's Motion for Priority of Lien

Appearances:

RAYMOND DEL TUFO, JR., ESQ.
United States Attorney
Attorney for Plaintiff
By: Eugene M. Friedman, Esq.
Assistant United States Attorney

WALLISCH & WALLISCH, ESQS.
Attorneys for Defendant, Borough of Ringwood
By: Louis Wallisch, Jr., Esq.

MODARELLI, District Judge.

The United States has moved for an order which would grant priority to a mortgage lien it held on properties located in the Borough of Ringwood, New Jersey. The effect of such an order would be to subordinate to the aforementioned mortgage certain municipal tax liens of the Borough. A review of the pertinent facts which are not in dispute is necessary before the question of law is reached.

The United States, acting by and through the General Services Administration, conveyed to the defendant, Ringwood Iron Mines, Inc., certain mining properties situate in

Ringwood. The properties had been deemed surplus by the Administration in accordance with appropriate statutes and regulations. A relatively nominal sum was paid in cash, the balance of the purchase price, a promissory note for $1,400,000 being collaterally secured by a purchase money mortgage on the subject premises dated August 14, 1951, with the General Services Administration as mortgagee. The mortgage was duly recorded in the Office of the Clerk of the County of Passaic. The operation of the mines by the Ringwood Iron Mines, Inc., was not marked by success, to phrase it conservatively, and as a result liabilities were incurred, including taxes to the Borough. Real estate taxes fell in arrears for part of 1953, and all of 1954 and 1955. The Collector of Taxes of the Borough, pursuant to N. J. S. A. 54:5-19 et seq., duly advertised the property of the Ringwood Iron Mines, Inc., for sale. On December 30, 1955, at public auction, the Collector of Taxes sold the property in question to the Borough of Ringwood subject to the equity of redemption. A certificate of sale for the unpaid taxes was issued to the Borough.

The decline in the commercial fortunes of the mining enterprise also resulted in a default of payments under the mortgage. Successive adjustments were made as a concession to the financial plight of the mortgagor, but despite several liberal deferrals, the mortgagee was obliged to foreclose. The indebtedness amounted to $1,365,000, plus interest. In the foreclosure action filed January 23, 1956, the Borough of Ringwood was joined as party defendant. Judgment of foreclosure was entered July 2, 1956. The Government and the Borough at that time joined in a stipulation incorporated in the judgment which read, in part, as follows:

"* * * it is understood between the United States of America on the one hand and the Borough of Ring-

Opinion of Modarelli, D. J., on Plaintiff's Motion for Priority of Lien

wood on the other, that should it be determined by the Court pursuant to the trial of the question that under applicable law the tax claim of the Borough of Ringwood is not cut off by the foreclosure sale to be held pursuant to this proceeding and that said taxes are due and owing and are superior to the claim of the United States of America, such taxes shall remain a lien against the property and shall be payable by the owner thereof."

The pending motion is an attempt to settle the question noted in the judgment. In implementation of the judgment, the mortgaged premises were sold by the United States Marshall at the office of the Sheriff of Passaic County, December 4, 1956. The highest bid, $1,685,367.43, offered by the Administrator of General Services, was accepted and an order confirming the sale issued.

The issue may be summarized as follows: Are liens for municipal taxes cut off by a judicial sale resulting from the foreclosure of a mortgage held by the General Services Administrator? Briefs have been filed, citing authorities in support of the contentions of both parties.

In its brief, the Government advanced the argument that its precedence arises from the force of the priority statute embodied in 31 U. S. C. §191, formerly R.S. §3466. In order for this statute to control the disposition of the matter at bar, it would be necessary to find the debtor insolvent.[1] *United States* v. *Oklahoma*, 261 U. S. 253 (1923). This court has never made such a finding of in-

[1] See extensive annotation on the subject, "Construction, Application, and Effect of Statutes Giving Preference to Debts Due the United States out of Assets of Insolvent," in 97 L. ed. 33 (1952).

solvency.[2] At the hearing of this motion the Government abandoned this statute as a basis of its contentions. Inasmuch as the statutory provision is inapplicable, the court has no occasion to consider the questions arising thereunder.

The second contention of the Government is that the claim of the United States takes precedence by virtue of the fact that it is prior in time. In other words, the plaintiff invokes the maxim, "The first in time is the first in right." This principle is widely accepted and applied in the absence of legislation to the contrary. 33 Am. Jur., *Liens*, §33; 53 C. J. S., *Liens*, §10b. In opposition to this contention, the Borough relies upon the effect of the New Jersey priority statute. The New Jersey statute expressly provides that unpaid real estate taxes shall constitute a first lien on the land assessed[3] and be paramount to all prior or subsequent encumbrances.[4] It is well settled in New Jersey that the legislature may make taxes a lien paramount to prior claims, either by incorporating such a directive in municipal charters or by laws of general ap-

[2] The appointment of Mr. Arthur C. Bruni by the court on February 7, 1956, was in the capacity of a custodian to prevent waste as well as to oversee the proper maintenance, preservation and safety of the mining property and equipment.

[3] N.J.S.A. §54:5-6. "All unpaid taxes on lands, with interest, penalties, and costs of collection shall be a lien on the land on which they are assessed on and after December first of the year in which they fall due."

[4] N.J.S.A. §54:5-9. "Every municipal lien shall be a first lien on such land and paramount to all prior or subsequent alienations and descents of such lands or encumbrances thereon, except subsequent municipal liens."

plication.[3] The power to create such priority, at least as to a private mortgagee, has been recognized by the Supreme Court of the United States in *Provident Institution for Savings* v. *Mayor & Aldermen of Jersey City*, 113 U. S. 506 (1885).

As pointed out by the Supreme Court in *United States* v. *State Bank of North Carolina*, 31 U. S. 29, 35 (1832), a claim of the United States for priority of payment "does not stand upon any sovereign perogative, but is exclusively founded upon the actual provisions of their own statutes." This principle has been reiterated in many subsequent decisions. See *Equitable Trust Co. of New York* v. *Connecticut Brass & Mfg. Corp., et al*, 290 F. 712, 718 (C. A. 2, 1923); *Wagner* v. *McDonald*, 96 F. 2d 273 (C. A. 8, 1938); *Liberty Mutual Ins. Co.* v. *Johnson Shipyards Corp.*, 6 F. 2d 752 (C. A. 2, 1925), aff'd. *Stripe* v. *United States*, 269 U. S. 503 (1926). But by the decision of *United States* v. *City of New Britain, et al*, 347 U. S. 81 (1954), it is now settled that the common law rule of "the first in time is the first in right" applies to determine priority between statutory tax claims of the city and federal governments in cases involving real estate where it is not shown that the taxpayer is insolvent. This decision is part of a series of cases which gives the United States precedence, but it is interesting to note that all of the cases which go to establish this priority arose under federal tax statutes, 26

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[3] *Morrow* v. *Doyle*, 28 N. J. Eq. 459 (1877); *Vreeland* v. *The Mayor & Alderman of Jersey City*, 37 N. J. Eq. 574 (1883); *Third Ave. Building & Loan Assn.* v. *Prothero*, 124 N. J. Eq. 193, 1 A. 2d 20 (1938); *Mayor & Alderman of Jersey City* v. *Township of Montville*, 84 N. J. L. 43, 85 A. 838, aff'd. 85 N. J. L. 372, 91 A. 1060 (1913), all interpreting the predecessor of the present statute.

U. S. C. §§3670, 3671, 3672.[6] See Scheps, "United States v. New Britain—A Critical Study," 19 NIMLCO Mun. L. Rev. 376 (1956). Quaere: Would the same priority prevail in a contest between a municipal tax lien and a mortgage held by a federal agency with no question of insolvency involved? This is the problem presented in the case at bar.

The treatises on the subject of mortgages confine themselves to general propositions which leave the question unanswered. The authorities dismiss the subject with the unqualified statement that "The lien for taxes is always a first lien, prior to any other." *Walsh on Mortgages* (1934), p. 117. See also Osborne, *The Law of Mortgages* (1951), §221, pp. 596-600; Campbell, *Cases on Mortgages of Real Property* (1926), p. 413; *Glenn on Mortgages* (1943), Vol. III, §§434, 435, pp. 1695, 1697-1698. Surprisingly, there is also a paucity of decisional law touching upon the character of the liens and the sequence in which they did attach in the case at bar. One of the cases from which the municipality could draw support, *United States* v. *Woodside*, 34 F. Supp. 281 (1940), was reversed on appeal, *United States* v. *City of Greenville, et al.* 118 F. 2d 963 (C. A. 4 1941). It was noted in the latter decision that liens of the federal government and liens of the states are

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[6] See *United States* v. *Colotta*, 350 U. S. 808 (1955); *United States* v. *Acri*, 348 U. S. 211 (1955); *United States* v. *Scovil*, 348 U. S. 218 (1955); *United States* v. *Liverpool & London Globe Ins. Co., Ltd., et al.* 348 U. S. 215 (1955); *United States* v. *Gilbert Associates, Inc.*, 345 U. S. 361 (1953). The most recent decision of the Supreme Court which brought the *New Britain* holding under review is *United States* v. *White Bear Brewing Co.*, 350 U. S. 1010 (1956), reversing 227 F. 2d 359 (C. A. 7 1955). (federal tax lien has priority over a statutory mechanics lien even though the latter had been perfected and was prior in time).

on an equal basis for application of the principle "first in time, first in right." The decision which the Borough relies upon, *Byram Holding Co. v. Bogren, et al.* 2 N. J. Super. 331 (Ch. Div. 1949), 63 A. 2d 822, appears to stand alone, and contains language which seems at variance with the expression of views on the subject by the United States Supreme Court. In the *Bogren* case, the Federal Housing Commissioner argued that a mortgage assigned to him in 1936 conferred priority over a lien for unpaid municipal taxes for the year 1940. The court held in favor of the municipality. In appraising this decision, it should be noted that the federal government had waived the exemption of the property owned by the Federal Housing Commissioner from municipal taxation. Accordingly, the court reasoned:

> "It necessarily follows that if an interest of the Federal Housing Commissioner is subject to the lien of a tax, he is accordingly subject to proceedings to enforce payment of the tax." 63 A. 2d at 824.

This reasoning is to be contrasted with the views of the Supreme Court in *New Brunswick v. United States*, 276 U. S. 547 (1928). There the question was whether or not the municipality could levy its real property taxes upon the interests held both by the United States Housing Corporation as mortgagee and by the private purchasers as equitable owners. The Court responded with these words:

> "We see no reason, however, if the New Jersey law permits, why the City many not assess taxes against the purchasers upon the entire value of the lots and enforce collection thereof by sale of their interests in the property. With that the Corporation and the United States have no concern. But it is plain, under

the doctrine of the *Clallam* case, that the City is without authority to enforce the collection of the taxes thus assessed against the purchasers by a sale of the interest in the lots which was retained and held by the Corporation as security for the payment of the unpaid purchase money, whether as an incident to the retention of the legal title or as a reserved lien or as a contract right to mortgages. That interest, being held by the Corporation for the benefit of the United States, is paramount to the taxing power of the State and cannot be subjected by the City to sale for taxes." 276 U. S. at pp. 555-556.

I have thoroughly researched the legislative history of the General Services Administration and have found no expression of congressional intent to waive immunity from state or local taxation. The agency was established by the Federal Property and Administrative Services Act of 1949.[7] Section 204(f) authorizes the Administrator to preserve and manage any mortgage, lien, or other interest retained as security, and authorizes him to enforce and settle the rights of the Government with respect thereto.[8] The statute was amended in 1950 which authorized the Administrator to make payments in lieu of taxes.[9] This

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[7] 63 Stat. 377 as amended; 5 U.S.C. §630; 40 U.S.C. §471; 41 U.S.C. §251; 44 U.S.C. §391. The statute states that the Administration is "an agency in the executive branch of the Government." 5 U.S.C. §630(a). The Administrator is obliged to report annually to Congress. 40 U.S.C. §492.

[8] U. S. Code Cong. Ser., 1949, p. 1491; 40 U.S.C.A. §485(f).

[9] Section 201(a)(9) of the amendment authorizes the payment "of sums in lieu of taxes on real property declared surplus by Government corporations pursuant to the Surplus Property Act of 1944, where legal title to such property remains in any such Government corporation * * *." 40 U.S.C.A. §490.

authority would not extend to property declared surplus after July 1, 1949, nor to property, the title of which passed to the United States.[10]

Upon inquiry the court has learned that all of the property rights in question had been acquired by the Defense Plant Corporation in 1942-1943. The Defense Plant Corporation went out of existence on June 30, 1945, at which time its assets were transferred to the Reconstruction Finance Corporation. The Reconstruction Finance Corporation conveyed the property to the United States on February 13, 1950.[11]

Referring to the numerous lending agencies of the federal government, one authority observed:

> "There are many of these Federal agencies today, and they have a common characteristic, in that they exercise governmental functions. Each bureau, therefore, is the national government in a new guise, and hence it can claim various immunities that pertain to sovereign operations." *Glenn on Mortgages* (1943), Vol I, §80.1, p. 489.[12]

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[10] See the Senate Report which analyzes the amendment section by section. U. S. Code Cong. Ser., 1950, Vol. 2, pp. 3547, 3556-3557.

[11] The premises were declared surplus on June 2, 1945. At that time the property came under the authority of the War Assets Administration, the predecessor of the General Services Administration.

[12] In recognizing the impediment which sovereign immunity would place in the path of foreclosure actions, Congress magnanimously waived that immunity in such actions. Act of March 4, 1921, now 28 U.S.C.A. §2410.

Opinion of Modarelli, D. J., on Plaintiff's Motion for Priority of Lien

The United States Supreme Court has held in numerous cases that the Resettlement Administration, Home Owner's Loan Corporation, the Federal Farm Board, and other such agencies are constituted Federal Agencies. They exercise governmental functions and have full power to do what is necessary to carry out such functions. See *Pittman* v. *Home Owner's Loan Corporation*, 308 U. S. 21, 32 (1939); *Graves, et al* v. *People of the State of New York, ex rel. O'Keefe*, 306 U. S. 466, 477 (1939); *Smith* v. *Kansas City Title & Trust Co., et al*, 255 U. S. 180, 209, 212, (1921). See also *North Dakota-Montana Wheat Growers' Ass'n.* v. *United States*, 66 F. 2d 573 (1933), cert. denied 291 U. S. 672 (1934); 92 A. L. R. 1484. These cases have held, in addition, that in granting loans and extending credit the Government is exercising a governmental function and is, therefore, not going into business in competition with private business. This conclusion rests upon the rationale that the Federal Government has established these sovereign agencies in an effort to aid the needy and those unable to obtain aid elsewhere. See *United States* v. *Sherman, et al*, 41 F. Supp. 463, 465 (D. C., N. D., N. Y. 1941). In the latter case, predicated upon the reasoning outlined, a chattel mortgage held by the Resettlement Administration was held superior to a judgment creditor who sought execution of his lien.

While the case law establishes the proposition that a claim of the United States for priority payment is exclusively founded upon the actual provisions of their own statutes, the controlling fact is that the federal law "does not grant permission to the states to interfere with a lien of the federal government by subsequent exercise of their taxing powers." *United States* v. *City of Greenville*, supra, at p. 966. *New Brunswick* v. *United States*, supra, at pp. 555-556. A state cannot on behalf of its municipalities im-

pair the standing of federal liens without the consent of Congress. *United States* v. *New Britain*, supra, at p. 84; *Michigan, et al* v. *United States*, 317 U. S. 338, 340 (1943); *United States* v. *Oklahoma*, supra, at p. 260; *United States* v. *Snyder*, 149 U. S. 210, 214 (1893). This is so regardless of the fact that the lien arises from a federal tax or a mortgage held by the United States. There is nothing in the Federal Property and Administrative Services Act of 1949 to show that Congress intended antecedent federal liens to rank behind other encumbrances, and the legislative history lends support to this impression.

In granting priority to the mortgage, I am not unmindful of the several equities in favor of the municipality. In fact, it is only the weight of the superior decisional authority that has led me to the conclusion reached herein. The court is very much aware of the fact that since 1931 the national government embarked on a policy of making loans on various sorts of security. In no area was it more active than in the mortgage market. I am unable to see how such transactions differ from those between private parties. The explanation of sovereignty appears too unsatisfactory when we see the United States step down from that place of sovereignty to enter the domain of business and commerce. See the observations expressed in *United States* v. *Guaranty Trust Company of New York, et al*, 33 F. 2d 533, 539 (C. A. 8, 1929) aff'd. 280 U. S. 478 (1930); *United States* v. *Miller*, 28 F. 2d 846, 850 (C. A. 8, 1928). When a local government provides police and fire protection, health and education facilities, and water supply, all of which enhance the value of property within its jurisdiction, "it is only an ordinary and legal exertion of government to provide means for its compulsory compensation." *Dunbar* v. *City of New York*, 251 U. S. 516, 518 (1920). But the Supreme Court has limited its sanction of means

for compulsory compensation to interests in private hands. Consequently, in the absence of contrary directions in federal statutes, a lien in favor of the United States takes precedence over a later lien for municipal taxes. See McQuillan, *The Law of Municipal Corporations*, (3d ed. 1950), §44.143.

The motion of the plaintiff is granted.

The foregoing opinion shall constitute findings of fact and conclusions of law as required by Rule 52.

An order may be submitted in conformity with the opinion herein expressed.

Order for Judgment

On motion of Chester A. Weidenburner, United States Attorney, attorney for plaintiff, by Irwin I. Kimmelman, Assistant United States Attorney,

In accordance with the Opinion filed herein on May 8, 1957, it is, on this 22nd day of May, 1957, ORDERED, ADJUDGED and DETERMINED that the mortgage of the plaintiff, United States of America, is superior and prior to the lien for municipal taxes of the defendant, Borough of Ringwood.

ALFRED E. MODARELLI
United States District Judge

We hereby consent to the above Order for Judgment as to form.

WALLISCH & WALLISCH,
Attorneys for Defendant,
Borough of Ringwood,
By LOUIS WALLISCH, JR.,
A Member of the Firm.

Notice of Appeal

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil No. 35-56

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

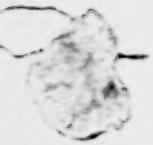
vs.

BOROUGH OF RINGWOOD,

Defendant-Appellant.

NOTICE is hereby given that the Borough of Ringwood, a municipal corporation of the State of New Jersey, appeals to the United States Circuit Court of Appeals for the Third Circuit from the judgment of this court entered on the 22nd day of May, 1957, wherein it was adjudged and determined that the mortgage of the plaintiff, United States of America, is superior and prior to the lien for municipal taxes of the defendant, Borough of Ringwood.

WALLISCH & WALLISCH
Attorneys for Defendant-Appellant,
Borough of Ringwood
By LOUIS WALLISCH, JR.,
Of the Firm



Opinion of the Court

(Filed January 20, 1958)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,311

UNITED STATES OF AMERICA

vs.

RINGWOOD IRON MINES, INC., THE BOROUGH OF RINGWOOD, and STATE OF NEW JERSEY, BOROUGH OF RINGWOOD,

Appellant.

On Appeal from the United States District for the District of New Jersey.

Argued December 17, 1957

LOUIS WALLISCH, JR. of WALLISCH & WALLISCH [with them on the brief was AARON DINES] for Defendant-Appellant.

HAROLD S. HARRISON [with him on the brief were PERRY W. MORTON, Assistant Attorney General; CHESTER A. WEIDENBURNER, United States Attorney, Newark, New Jersey; and ROGER P. MARQUIS, Attorney, Department of Justice] for Plaintiff-Appellee.

Before BIGGS, Chief Judge, and GOODRICH and HASTIE, Circuit Judges.

Opinion of the Court

By GOODRICH, Circuit Judge.

This case involves a question of priority of liens between the United States and the Borough of Ringwood, New Jersey. The district court decided in favor of the United States and against the Borough, 151 F. Supp. 421 (D. N. J. 1957), and the Borough appeals.

The subject matter of the litigation is a tract of land in the Borough of Ringwood, New Jersey. In 1950 the United States acquired this land from the Reconstruction Finance Corporation. In 1951 the United States conveyed the land to the Ringwood Iron Mines taking back a note for the purchase price secured by a mortgage on the premises for all but a nominal part of the purchase price. The mortgage was duly recorded. Operation of the property as an iron mining enterprise was not successful. Only one, and that a partial, payment was made on the mortgage. There were unpaid real estate taxes to the Borough for part of the year 1953 and in full thereafter. The default in payments on the mortgage obligation continued and the Government, through the General Services Administration, made several efforts to assist the debtor by extending time of payment and modifying the amounts due. None of these ameliorations brought success to the enterprise.

On the 30th of December, 1955, the Collector of Taxes for the Borough sold the real estate for unpaid taxes subject to the right to redeem. On the 23rd of January, 1956, foreclosure proceedings were begun by the United States. A custodial receiver was appointed on the 7th of February, 1956, and discharged March 15, 1957. A judgment of foreclosure was rendered July 2, 1956, and the premises sold by the United States Marshal.

It is clear that this case is ruled by *United States* v. *New Britain*, 347 U. S. 81 (1954). That was a case in which the Connecticut statute purported to make real estate tax

liens take precedence over all transfers and encumbrances. The decision of the Supreme Court of the United States was that first in time was first in right and that the subsequently acquired liens for taxes by the State of Connecticut could not take precedence over the lien of the United States for its unpaid taxes theretofore vested. The only difference between that case and this is that here the lien of the United States comes through the execution of the mortgage rather than resulting from the operation of law for the failure to pay taxes. We think that the doctrine enunciated in New Britain is broad enough to include this situation also. See *New Brunswick* v. *United States*, 276 U. S. 547 (1928); *cf.*, *United States* v. *Latrobe Construction Co.*, 246 F. 2d 367 (8th Cir. 1957); *United States* v. *Evans*, 245 F. 2d 681 (10th Cir. 1957).

The Borough suggests that the priority in time rule, which is an old rule of equity, should not be applicable here because of the several efforts by the Government in extending time and easing conditions of payment while the local taxes remained unpaid. However, the relationship among the parties here is not that to be found in suretyship where an extension of time by the creditor to the debtor absent the consent of the uncompensated surety discharges the latter even without proof that he was injured thereby. *Restatement, Security*, §129 (1941). The Borough was not hurt by the Government's dealing with the debtor. In fact, the citizens of the Borough were presumably helped by anything designed to keep this concern going as an employer in the little community. The Borough does urge that it is dependent upon real estate taxes for the maintenance of its municipal functions and that the tax lien is the only way it can enforce this source of income. No doubt all that is true but we fail to see how these facts affect our legal question. They fall short of a showing that the Govern-

ment's actions adversely affected the collectibility of the assessment in question. Therefore, the argument that there is an equity preventing application of the rule as stated in *New Britain* is not well founded in this situation.

A further contention is set forth that the Borough, by enforcing its lien first, obtained a superior legal right to the property subject only to an "equity of redemption." The short answer is that, whatever may be the rule as to private mortgagees, a sale under state law cannot divest a prior mortgage lien held by the United States. *New Brunswick* v. *United States, supra.*

The Borough has suggested that it is entitled to relief under the provisions of a federal statute making allowance for payment in lieu of taxes. 69 Stat. 722 (1955), 40 U.S.C.A. §§521-24 (Supp. 1957). Upon that question we neither have nor express any opinion. It is not before us in this case.

The judgment of the district court will be affirmed.

A True Copy:

Teste:

Clerk of the United States Court of
the Third Circuit

Clerk's Letter re: Mandate of U. S. Court of Appeals

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
2046 U. S. COURT HOUSE
PHILADELPHIA 7

IDA O. CRESKOFF
CLERK

TELEPHONE
WA. 2-3144

February 5, 1958

Louis Wallisch, Jr., Esq.
181 Prospect Street
Passaic, New Jersey

Re: United States v. Borough of Ringwood
No. 12,311

Dear Sir:

We are today issuing to the clerk of the U. S. District Court the mandate of this court in the above case.

Very truly yours,

IDA O. CRESKOFF
Clerk